TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~415.~~ 199

WILLIAM C. ZANTZINGER, HARRIET A. ZANTZINGER, WILLIAM F. ZANTZINGER, ANNIE B. ZANTZINGER, JANE N. ZANTZINGER, AND DANIEL W. ZANTZINGER, APPELLANTS,

vs.

WILLIAM GUNTON AND THE BANK OF WASHINGTON.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED SEPTEMBER 10, 1872.

SUPREME COURT OF THE UNITED STATES.

No. 415.

WILLIAM C. ZANTZINGER, HARRIET A. ZANTZINGER, WILLIAM F. ZANTZINGER, ANNIE B. ZANTZINGER, JANE N. ZANTZINGER, AND DANIEL W. ZANTZINGER, APPELLANTS,

vs.

WILLIAM GUNTON AND THE BANK OF WASHINGTON.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

INDEX

	Original.	Print.
Bill of complaint	1	1
Exhibit A	3	2
B	3	2
C	6	4
D	7	5
Summons to answer, bill and return	12	7
Answer of William Gunton et al	13	8
Exhibit to William Gunton's answer	18	11
Replication to William Gunton's answer	19	11
Deposition of William Gunton for defendants	20	13
Thomas S. Burr, for defendants	36	24
Thomas E. Lloyd, for defendants	38	25
Charles A. James, for defendants	40	26
Arthur Fendall, for defendants	41	27
Charles A. James, resumed	42	30
Exhibits to deposition of Charles A. James	54, 67	27, 38
Order certifying cause to general term	74	48
Proceedings before general term	74	48
Decree	75	48
Appeal	75	48
Clerk's certificate	76	48
Agreement	77	49

1 *Bill of complaint.—Filed Ap'l* 15, 1870.

Supreme court District of Columbia, the 15th day of April, 1870.

W'M C. ZANTZINGER, HARRIET ANN ZANTZINGER, W'm F. Zantzinger, Annie B. Zantzinger, Jane H. Zantzinger, Daniel W. Zantzinger, (by next friend W'm C. Zantzinger,) *vs.* WILLIAM GUNTON AND THE BANK OF WASHINGTON. } Eq. No. 1955.

To the supreme court of the District of Columbia, holding an equity court for said district:

The plaintiffs complain as follows:

1. Harriet Ann Zantzinger, one of the plaintiffs, is the daughter and only child of William and Harriet Fischer, late of the city of Washington, D. C.; W'm C. Zantzinger is the husband of said Harriet Ann; and W'm F. Zantzinger, Annie B. Zantzinger, Jane H. Zantzinger, and Daniel Webster Zantzinger, are the children of the said W'm C. and Harriet Ann Zantzinger, the two last named being infants.

2. William Fischer died in 1852, leaving a will, a copy of which is hereto annexed, marked Exhibit A, and made a part of this bill.

3. Harriet Fischer died in 1859, leaving a will, a copy of which is hereto annexed, marked Exhibit B, and made a part of this bill.

4. William Fischer, in his life-time, was seized of various par-
2 cels of real estate, and among them of those mentioned in the accompanying schedule, marked Exhibit C, and made a part of this bill.

5. The said William Fischer, being so seized, and Harriet Fischer, his wife, by a deed of trust executed the 14th day of May, 1845, a copy of which, marked Exhibit D, is hereto annexed and made a part of this bill, conveyed to William Gunton, in trust, to secure the payment of a note from William Fischer to the Bank of Washington, dated May 3d, 1845, at sixty days, for six thousand and sixty-five $\frac{84}{100}$ dollars, the property mentioned in the above-named schedule, marked Exhibit C.

6. The plaintiffs are the only persons having any legal or equitable interest under the wills of the said William and Harriet Fischer, in the property mentioned in said schedule.

7. So far as the plaintiffs have been able to learn, no settlement of the accounts of the trustee under this deed of trust has ever been made, nor have they any knowledge whether the said note has been paid, or what disposition has been made of the property conveyed by said deed.

Now, therefore, the plaintiffs pray:

1. That the defendant, William Gunton, be ordered to render to the court a full statement of his accounts under said deed of trust, specifying in distinct items, what portions of the property conveyed by said deed have been sold, to whom, and for what prices; also what portions remain unsold.

2. That he further be ordered to report whether said note for $6,065.85 has been paid, or, if any portion remains unpaid, what amount is due thereon at the present time.

3. That he further be ordered to report what disposition he has made of the proceeds of the sales of the property conveyed by said deed of trust, and by what authority he has so disposed of said proceeds.

4. That he be further ordered to report the amount due the
3

estates of the said W'm and Harriet Fischer, if any, out of the proceeds of such sales, and also what portions of the property conveyed by said deed of trust, remaining unsold in his hands, the said estates are entitled to.

5. That he be required to pay over immediately all moneys due said estates, to the legal representatives of said estates, and to convey all the property belonging to said estates to the devisees under said wills.

6. That the plaintiffs may have such other and further relief as equity and good conscience may require.

The defendants to this bill of complaint are William Gunton and the Bank of Washington, a body corporate, doing business in this district.

R. T. MERRICK,
FRANCIS MILLER,
Of Counsel for Plaintiffs.

EXHIBIT A.—*William Fischer's will.*

For copy of will see page 68.

EXHIBIT B.

The last will and testament of me, Harriet Fischer, widow of William Fischer, deceased.

That is to say subject to the payment of my funeral expenses, including a grave-stone, not exceeding in price the sum of sixty dollars, and subject to the payment of all my just debts, I give, devise and bequeath all my estate and property, real, personal, and mixed, as hereinafter disposed and directed; that is to say, to my grandchild, Fannie Bell Zantzinger, I bequeath my large plain silver sugar-bowl and cream-pot, and also a French china desert-set, to be delivered to my said
4 grandchild on her attaining the age of sixteen years, but if she dies before attaining that age, then I bequeath the same to my grandchild, Jane Heyer Zantzinger, on her attaining the age of sixteen years, but if she also die before attaining that age, then I bequeath the same to my daughter absolutely to dispose of to or among her other child or children.

To my grandchild, William Fisher Zantzinger, I bequeath my blue portemonnaie with twenty dollars to spend as he, my said grandchild, may wish.

To my daughter, Harriet Ann Zantzinger, I bequeath the residue of my silver for her separate property, during life, with the power to her of disposing of it to her children when she may so wish, and if no such disposition made, then to fall into the residue of my estate hereinafter provided for.

To my sister, Elizabeth Gunton, I bequeath my gold eye-glass and rose-wood writing-desk.

To my sister, Mary Gunton, I bequeath my amethyst breastpin; to my brother, William Gunton, I bequeath my gold spectacles; to my sister, Ann Gunton, I bequeath my gold watch, gold chain, and seals.

To my said brother, William Gunton, and his heirs, executors, administrators, and assigns, I give, devise, and bequeath all the rest and residue of my estate, real, personal, and mixed, whatsoever and wheresoever the same may be situate, in trust and to and for the uses, interests and purposes hereinafter mentioned; that is to say, in trust, to manage and dispose of the same in whole or in part, by selling and con-

veying, investing, and re-investing, or by leasing, renting, or otherwise dealing with the same, as if it was his own property, subject to the trusts hereinafter declared, but without any manner of liability upon any person or persons contracting with him, in respect of such property, to look to the fulfillment of the said trusts beyond the receipts and acquittance of the trustee. And the trusts, in respect of the said rest and residue of my estate, I do declare to be, that sufficient sums of money for a respectable support for my daughter and the education and support of her children, shall be paid to my said daughter, Harriet Ann Zantzinger, at convenient periods, not less frequent than quarterly, during her natural life, to and for her sole and separate use and the support and education of her children, free and clear of all control or interference by her present or any future husband, or any liability for the debts or engagements of her present or any future husband.

5 And the other portions of the rents, issues, interests, dividends, and profits of the said rest and residue of my estate, together with the corpas and estate of the whole of such residue, embracing the remainder after my daughter's death, shall be held in trust by the said trustee, with the like powers of sale, lease, investment and re-investment, and general and absolute disposition, to and for the use and benefit of the child or children of my said daughter, living at her death, his, her, or their heirs, executors, administrators, and assigns; if more than one such child, then share and share alike, among them.

And I do hereby appoint my brother, William Gunton, to be the sole executor of this my last will and testament, hereby revoking all other testamentary dispositions by me heretofore made, and in the event of the death of my said brother, pending the trusts created by this will, I devise and appoint that James M. Carlisle, esq., be invested with all the trusts and powers hereinbefore conferred upon my said brother, and in like manner in the event of Mr. Carlisle's death, I devise and appoint that John F. Clarke, esq., shall succeed to the same trusts.

In testimony whereof, I have hereto set my hand and seal this seventh day of March, in the year of our Lord one thousand eight hundred and fifty-seven.

[SEAL.] HARRIET FISCHER.

Signed, sealed, published, and declared as and for her last will and testament, by the above-named testatrix, Harriet Fischer, in our presence; who, in her presence, and at her request, and in the presence of each other have signed the same as witnesses, this seventh day of March, 1857.

S. B. BOARMAN.
W. E. HOWARD.
ELASAH MORAN.

DISTRICT OF COLUMBIA, *Washington County, to wit:*

ORPHANS' COURT, *May 28th*, 1859.

This day appeared Silvester B. Boarman and Elasah Moran, two of the subscribing witnesses to the aforegoing last will and testament of Harriet Fischer, late of Washington County aforesaid, deceased, and severally made oath on the Holy Evangels of Almighty God,

6 that they did see the testatrix, therein named, sign and seal this will, that she published, pronounced, and declared the same to be her last will and testament, and that, at the time of so doing, she was, to the best of their apprehensions, of sound and disposing mind, memory, and understanding, and that they, together with William E.

Howard, the other subscribing witness, respectively subscribed their names as witnesses to this will, in the presence and at the request of the testatrix, and in the presence of each other.

Test.

ED. N. ROACH,
Register of Wills.

DISTRICT OF COLUMBIA, *Washington County, to wit:*

I certify that the foregoing is a true copy from the original, filed and recorded in the office of the register of wills for Washington County, aforesaid.

Witness my hand and seal of office, this 3d day of June, in the year 1859.

ED. N. ROACH,
Register of Wills.

EXHIBIT C.—SCHEDULE.

Exhibit C to bill of complaint of H. A. Zantzinger et als. against Wm. Gunton and Bank of Washington.

Square 582, lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12.
Square 576, lot 9.
Square 635, lots 7, 8, 13, 14, 15, 16, 18, 20, and 21.
Square 636, lots 3, 6, 10, 16, 17, and 18.
Square 638, lots 4, 5, and 7.
Square 639, lots 2 and 3.
Square east of 643, lot 1.
Square 647, all.
Square east of 667, lot 3.
Square 680, lots 1, 2, 3, 4, and 10.
Square 681, lots 3 and 10.
Square 683, lots 8, 10, and 11.
Square 684, lots 4, 7, and 8.
Square 685, lots 4 and 9.
7 Square 687, lots 5, 13, 14, and 18.
Square 689, lots 3, 4, 5, 6, 9, and 10.
Square 691, lot 9.
Square 693, lot 5.
Square 694, lot 6.
Square 700, lots 9 to 32, inclusive.
Square 720, lots 1, 2, 3, 4, 10, 11, 12, 13, 20, 21, and 22.
Square 721, lots 5, 6, 7, 8, 9, 10, 16, 17, 18, 19, and 20.
Square 722, lot 1.
Square 723, lots 5, 6, 7, 8, 9, and 10.
Square 724, lots 4, 5, 8, 9, 13, 14, 18, 19, 22, 23, 24, and 27.
Square 725, lots 8, 9, 20, 21, 25, 26, 30, and 31.
Square 732, lots 18 and 19.
Square 743, lots 17, 20, 23, and 24.
Square 753, lots 1, 2, 3, 16, 17, 18, 19, 20, 21, 22, 23, and 24.
Square 756, lots 3, 4, 5, 6, 7, and 8.
Square 759, lots 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18.
Square 780, lots 4, 5, 6, and 7.
Square 826, lot 7.
Square 783, all.
Square 853, all.

EXHIBIT D.

WM FISCHER AND WIFE *to* WM GUNTON. } Trust, recorded 5th August, 1845.

This indenture, made this fourteenth day of May, in the year eighteen hundred and forty-five, between William Fischer and Harriet Fischer, his wife, of Washington City, in the District of Columbia, of the first part, and William Gunton, of the same place, of the second part: Whereas the said William Fischer stands indebted unto the trustees of the Bank of Washington, on his note bearing date the third day of May, in the year of eighteen hundred and forty-five, drawn payable to the order of the said William Fischer at sixty days after date, for the sum of six
8 thousand and sixty-five dollars and eighty-four cents, for value received, with interest from the first day of May, eighteen hundred and forty-five, at the Bank of Washington, and endorsed by the said Willaim Fischer, and also by Roger C. Weightman, without recourse, to him the said Roger; and whereas the said parties of the first part are desirous of securing the payment of the above-mentioned note, and every other note or notes that may hereafter at any time be given for and on account of said note by way of renewals or otherwise, by the execution of these presents: Now this indenture witnesseth that the said parties of the first part, for and in consideration of the premises, and of the sum of five dollars to them in hand paid by the said William Gunton, at and before the sealing and delivery hereof, the receipt whereof is hereby acknowledged, hath, and by these presents doth bargain, sell, release, and convey unto the said William Gunton, his heirs and assigns forever, the following-described squares and lots of ground situate in Washington City, and distinguished on the ground-plan thereof as lots numbered one, (1,) two, (2,) three, (3,) four, (4,) five, (5,) six, (6,) seven, (7,) eight, (8,) nine, (9,) ten, (10,) eleven, (11,) and twelve, (12,) in square five hundred and eighty-two, (582;) lot nine, (9,) in square five hundred and seventy-six, (576;) lots seven, (7,) eight, (8,) thirteen, (13,) fourteen, (14,) fifteen (15,) sixteen, (16,) seventeen, (17,) eighteen, (18,) twenty, (20,) and twenty-one, (21,) in square six hundred and thirty-five, (635;) lots three, (3,) six, (6,) ten, (10,) sixteen, (16,) seventeen, (17,) and eighteen, (18,) in square six hundred and thirty-six, (636;) lots four, (4,) five, (5,) and seven, (7,) in square six hundred and thirty-eight, (638;) lots two, (2) and three, (3,) in square six hundred and thirty-nine, (639;) lot one, (1.) in square east of square six hundred and forty-three, (643;) all of square six hundred and forty-seven, (647;) lot three, (3,) in square east of square six hundred and sixty-seven, (667;) lot one, (1,) in square six hundred and seventy-nine, (679;) lots one, (1,) two, (2,) three, (3,) four, (4,) and ten, (10,) in square six hundred and eighty, (680;) lots three, (3) and twelve, (12,) in square six hundred eighty-one, (681;) lots eight, (8,) ten, (10) and eleven, (11,) in square six hundred and eighty-three, (683;) lots four, (4,) seven, (7,) and eight, (8,) in square six hundred and eighty-four, (684;) lots four, (4,) and nine, (9,) in square six hundred and eighty-five, (685;) lots five, (5,) thir-
teen, (13,) fourteen, and eighteen, (14, 18,) in square six hundred
9 and eighty-seven, (687;) lots three, (3,) four, (4,) five, (5,) six, (6,) nine, (9,) and ten, (10,) in square six hundred and eighty-nine, (689;) lot nine, (9,) in square six hundred and ninety-one, (691;) lot five, (5,) in square six hundred and ninety-three, (693;) lot six, (6,) in square six hundred and ninety-four, (694;) lots nine, (9,) ten, (10,) eleven, (11,) twelve, (12,) thirteen, (13,) fourteen, (14,) fifteen, (15,) sixteen, (16,) seventeen,

Howard, the other subscribing witness, respectively subscribed their names as witnesses to this will, in the presence and at the request of the testatrix, and in the presence of each other.

Test.

ED. N. ROACH,
Register of Wills.

DISTRICT OF COLUMBIA, *Washington County, to wit:*

I certify that the foregoing is a true copy from the original, filed and recorded in the office of the register of wills for Washington County, aforesaid.

Witness my hand and seal of office, this 3d day of June, in the year 1859.

ED. N. ROACH,
Register of Wills.

EXHIBIT C.—SCHEDULE.

Exhibit C to bill of complaint of H. A. Zantzinger et als. against Wm. Gunton and Bank of Washington.

Square 582, lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12.
Square 576, lot 9.
Square 635, lots 7, 8, 13, 14, 15, 16, 18, 20, and 21.
Square 636, lots 3, 6, 10, 16, 17, and 18.
Square 638, lots 4, 5, and 7.
Square 639, lots 2 and 3.
Square east of 643, lot 1.
Square 647, all.
Square east of 667, lot 3.
Square 680, lots 1, 2, 3, 4, and 10.
Square 681, lots 3 and 10.
Square 683, lots 8, 10, and 11.
Square 684, lots 4, 7, and 8.
Square 685, lots 4 and 9.
7 Square 687, lots 5, 13, 14, and 18.
Square 689, lots 3, 4, 5, 6, 9, and 10.
Square 691, lot 9.
Square 693, lot 5.
Square 694, lot 6.
Square 700, lots 9 to 32, inclusive.
Square 720, lots 1, 2, 3, 4, 10, 11, 12, 13, 20, 21, and 22.
Square 721, lots 5, 6, 7, 8, 9, 10, 16, 17, 18, 19, and 20.
Square 722, lot 1.
Square 723, lots 5, 6, 7, 8, 9, and 10.
Square 724, lots 4, 5, 8, 9, 13, 14, 18, 19, 22, 23, 24, and 27.
Square 725, lots 8, 9, 20, 21, 25, 26, 30, and 31.
Square 732, lots 18 and 19.
Square 743, lots 17, 20, 23, and 24.
Square 753, lots 1, 2, 3, 16, 17, 18, 19, 20, 21, 22, 23, and 24.
Square 756, lots 3, 4, 5, 6, 7, and 8.
Square 759, lots 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18.
Square 780, lots 4, 5, 6, and 7.
Square 826, lot 7.
Square 783, all.
Square 853, all.

EXHIBIT D.

WM FISCHER AND WIFE *to* WM GUNTON. } Trust, recorded 5th August, 1845.

This indenture, made this fourteenth day of May, in the year eighteen hundred and forty-five, between William Fischer and Harriet Fischer, his wife, of Washington City, in the District of Columbia, of the first part, and William Gunton, of the same place, of the second part: Whereas the said William Fischer stands indebted unto the trustees of the Bank of Washington, on his note bearing date the third day of May, in the year of eighteen hundred and forty-five, drawn payable to the order of the said William Fischer at sixty days after date, for the sum of six
8 thousand and sixty-five dollars and eighty-four cents, for value received, with interest from the first day of May, eighteen hundred and forty-five, at the Bank of Washington, and endorsed by the said Willaim Fischer, and also by Roger C. Weightman, without recourse, to him the said Roger; and whereas the said parties of the first part are desirous of securing the payment of the above-mentioned note, and every other note or notes that may hereafter at any time be given for and on account of said note by way of renewals or otherwise, by the execution of these presents: Now this indenture witnesseth that the said parties of the first part, for and in consideration of the premises, and of the sum of five dollars to them in hand paid by the said William Gunton, at and before the sealing and delivery hereof, the receipt whereof is hereby acknowledged, hath, and by these presents doth bargain, sell, release, and convey unto the said William Gunton, his heirs and assigns forever, the following-described squares and lots of ground situate in Washington City, and distinguished on the ground-plan thereof as lots numbered one, (1,) two, (2,) three, (3,) four, (4,) five, (5,) six, (6,) seven, (7,) eight, (8,) nine, (9,) ten, (10,) eleven, (11,) and twelve, (12,) in square five hundred and eighty-two, (582;) lot nine, (9,) in square five hundred and seventy-six, (576;) lots seven, (7,) eight, (8,) thirteen, (13,) fourteen, (14,) fifteen (15,) sixteen, (16,) seventeen, (17,) eighteen, (18,) twenty, (20,) and twenty-one, (21,) in square six hundred and thirty-five, (635;) lots three, (3,) six, (6,) ten, (10,) sixteen, (16,) seventeen, (17,) and eighteen, (18,) in square six hundred and thirty-six, (636;) lots four, (4,) five, (5,) and seven, (7,) in square six hundred and thirty-eight, (638;) lots two, (2) and three, (3,) in square six hundred and thirty-nine, (639;) lot one, (1.) in square east of square six hundred and forty-three, (643;) all of square six hundred and forty-seven, (647;) lot three, (3,) in square east of square six hundred and sixty-seven, (667;) lot one, (1,) in square six hundred and seventy-nine, (679;) lots one, (1,) two, (2,) three, (3,) four, (4,) and ten, (10,) in square six hundred and eighty, (680;) lots three, (3) and twelve, (12,) in square six hundred eighty-one, (681;) lots eight, (8,) ten, (10) and eleven, (11,) in square six hundred and eighty-three, (683;) lots four, (4,) seven, (7,) and eight, (8,) in square six hundred and eighty-four, (684;) lots four, (4,) and nine, (9,) in square six hundred and eighty-five, (685;) lots five, (5,) thirteen, (13,) fourteen, and eighteen, (14, 18,) in square six hundred
9 and eighty-seven, (687;) lots three, (3,) four, (4,) five, (5,) six, (6,) nine, (9,) and ten, (10,) in square six hundred and eighty-nine, (689;) lot nine, (9,) in square six hundred and ninety-one, (691;) lot five, (5,) in square six hundred and ninety-three, (693;) lot six, (6,) in square six hundred and ninety-four, (694;) lots nine, (9,) ten, (10,) eleven, (11,) twelve, (12,) thirteen, (13,) fourteen, (14,) fifteen, (15,) sixteen, (16,) seventeen,

(17,) eighteen, (18,) nineteen, (19,) twenty, (20,) twenty-one, (21,) twenty-two, (22,) twenty-three, (23,) twenty-four, (24,) twenty-five, (25,) twenty-six, (26,) twenty-seven, (27,) twenty-eight, (28,) twenty-nine, (29,) thirty, (30,) thirty-one, (31,) and thirty-two, (32,) in square seven hundred, (700;) lots one, (1,) two, (2,) three, (3,) four, (4,) ten, (10,) eleven, (11,) twelve, (12,) thirteen, (13,) twenty, (20,) twenty-one, (21,) twenty-two, (22,) in square seven hundred and twenty, (720;) lots five, (5,) six, (6,) seven, (7,) eight, (8,) nine, (9,) ten, (10,) sixteen, (16,) seventeen, (17,) eighteen, (18,) nineteen, (19,) and twenty, (20,) in square seven hundred and twenty-one, (721;) lot one, (1,) in square seven hundred and twenty-two, (722;) lots five, (5,) six, (6,) seven, (7,) eight, (8,) nine, (9,) and ten, (10,) in square seven hundred and twenty-three, (723;) lots four, (4,) five, (5,) eight, (8,) nine, (9,) thirteen, (13,) fourteen, (14,) eighteen, (18,) nineteen, (19,) twenty-two, (22,) twenty-three, (23,) twenty-four, (24,) and twenty-seven, (27,) in square seven hundred and twenty-four, (724;) lots eight, (8,) nine, (9,) twenty, (20,) twenty-one, (21,) twenty-five, (25,) twenty-six, (26,) thirty, (30,) and thirty-one, (31,) in square seven hundred and twenty-five, (725;) lots eighteen, (18,) and nineteen, (19,) in square seven hundred and thirty-two, (732;) lots seventeen, (17,) twenty, (20,) twenty-three, (23,) and twenty-four, (24,) in square seven hundred and forty-three, (743;) lots one, (1,) two, (2,) three, (3,) sixteen, (16,) seventeen, (17,) eighteen, (18,) nineteen, (19,) twenty, (20,) twenty-one, (21,) twenty-two, (22,) twenty-three, (23,) and twenty-four, (24,) in square seven hundred and fifty-three, (753;) lots three, (3,) four, (4,) five, (5,) six, (6,) seven, (7,) and eight, (8,) in square seven hundred and fifty-six, (756;) lots nine, (9,) ten, (10,) eleven, (11,) twelve, (12,) thirteen, (13,) fourteen, (14,) fifteen, (15,) sixteen, (16,) seventeen, (17,) and eighteen, (18,) in square seven hundred and fifty-nine, (759;) lots four (4,) five, (5,) six, (6,) and seven, (7,) in square seven hundred and eighty, (780;) lot seven, in square eight hundred and twenty-six, (826;) all of square seven hundred and eighty-three, (783,) and eight hundred and fifty-three, (853,) with all and singular the hereditaments and premises, with the appurtenances belonging; to have and to hold all and singular the aforesaid mentioned and designated squares and lots of ground with the hereditaments and other premises, with the appurtenances thereunto, and to each and every of them belonging, unto the said William Gunton, and his heirs, upon and for the following trusts and purposes, that is to say, upon the trust at any time or times hereafter, and whenever and as soon as the said William Gunton from and after the date of these presents, shall think proper to do so, that he, the said William Gunton, or his heirs, shall and he or they are hereby fully authorised and empowered, to sell the square and lots, or any one or either of them, or any part of either of them, at public or private sale, for cash or upon credit, and upon such security for the payment of the purchase-money as he or they shall approve, and upon this further trust to convey the same by valid deeds of conveyance in fee simple to the several purchasers, and their heirs or assigns, and the moneys produced by the sales thereof, after paying all taxes that shall annually accrue on the said squares and lots or on either of them prior to the sale thereof, and the expenses which may be incurred by any such sales, shall be applied to the payment of the above-mentioned note, and that of any note or notes which may be at any time or times hereafter *be* given for and on account of said note, by way of renewal or otherwise; and the balance, if any, shall be paid over in such manner as the said William Fischer shall by any instrument of writing under his hand and seal direct to be made. And the

said William Fischer, for himself and his heirs, hereby covenants and agrees to and with the said William Gunton and his heirs, that he, the said William Gunton, or his heirs, shall and may forthwith proceed to dispose of the squares and lots, or of any or of either of them, or of any part of either of them as hereinbefore provided, and convey the same by valid deeds to the several purchasers, and that he, the said William Fischer, and his heirs, will do no act or cause to be done any act by means whereof or whereby the said required sales shall in any way be arrested, enjoined, or prohibited by any legal or equitable pro-
11 ceeding or otherwise; and also that he or his heirs, at the expense of the said trustees of the Bank of Washington, will make any other deed or deeds that shall be required by them for the conveyance of the same or of any of them. In witness whereof the said William Fischer and Harriet Fischer, his wife, have, on the day and year first above written, severally set their hands and seals to these presents.

WM FISCHER. [SEAL.]
HARRIET FISCHER. [SEAL.]

Signed, sealed, and delivered in presence of—
W. THOMPSON.
J. D. CLARK.

DISTRICT OF COLUMBIA, *Washington County, to wit:*

We, William Thompson and John D. Clark, justices of the peace in and for the county and district aforesaid, do hereby certify that William Fischer, a party to a certain deed bearing date on the fourteenth day of May, in the year 1845, and hereto annexed, personally appeared before us in our county aforesaid, the said William Fischer being personally well known to us as the person who executed the said deed, and acknowledged the same to be his act and deed; and we do further certify that *Samuel* Fisher, the wife of the said William Fischer, and a party to the aforesaid deed bearing date as above stated and hereto annexed, also at the same time personally appeared before us in our county aforesaid, she, the said Harriet Fischer, being personally well known to us as the person who executed the said deed, and she being by us examined privily and apart from her husband, and having the deed aforesaid fully explained to her, acknowledged the same to be her act and deed, and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under our hands and seals this fourteenth day of May, in the year eighteen hundred and forty-five.

W. THOMPSON, *J. P.* [SEAL.]
JOHN D. CLARK. *J. P.* [SEAL.]

12 *Summons to answer.—Issued Ap'l* 15, 1870.

In the Supreme Court of the District of Columbia, April 15, 1870.

WILLIAM C. ZANTZINGER ET AL. COMPLAINANT,
against
WILLIAM GUNTON ET AL., DEFENDANT.
} No. 1955. Equity. Dock. 10.

The President of the United States to William Gunton and the Bank of Washington, defendant:

You are hereby commanded to appear in this court, at its first special term, occurring twenty days after service of this subpœna, and answer

the exigency of the bill, under pain of attachment, and such other process of contempt as the court shall award.

Witness D. K. Cartter, chief justice.

[SEAL.] R. J. MEIGS, *Clerk.*

MEMORANDUM.—That the defendants are to enter their appearance in this suit in the clerk's office on or before the special term to which this writ is returnable; otherwise the bill may be taken for confessed.

I do authorize L. M. Graves to serve this writ.

April 15, 1870.

A. SHARP, *Marshal.*

Served, W'm Gunton and W'm Gunton, pr. Bank of Washington.

A. SHARP, *Marshal.*

APRIL 16, 1870.

13 *Answer of Def't Gunton & Bank of Washington—Filed.*

In the supreme court of the District of Columbia.

WILLIAM C. ZANTZINGER AND AL. *vs.* WILLIAM GUNTON AND AL. } In equity. No. 1955.

The answer of William Gunton for himself and as president of the board of trustees of the Bank of Washington, to the bill of complaint of W. Zantzinger and others.

The said defendant answering, says:

1. He admits the relationship of the several complainants to William Fischer and Harriet Fischer, as set forth in the bill.

2. He admits the death of William Fischer in 1852, leaving the will set forth in the bill.

3. He admits the death of Harriet Fischer in 1859, leaving the will set forth in the bill.

4. He admits that William Fischer was seized of the real estate mentioned in the bill, and together with his wife, Harriet Fischer, made the deed of trust mentioned in the bill, conveying the said real estate to this respondent in trust.

5. He denies that the plaintiffs have any legal or equitable interest in the property mentioned in the said deed of trust or in the proceeds thereof, under the wills of the said William and Harriet Fischer, or in any other way whatsoever.

6. He does not admit, but denies, the right of the plaintiffs to require an account of this defendant under the deed of trust aforesaid, and pleads the matters hereinafter stated in bar of the bill for such account, and at the same time demurs to the bill, in so far as it prays an account of the residue of the proceeds of the property after paying the note mentioned in the deed of trust.

7. He admits the right of the plaintiffs to require the application of the proceeds of the property to the payment of the note men-
14 tioned in the deed of trust as having been made by the said William Fischer, and therefore answers and says, that the said note was paid in full on the 10th day of December, 1850.

8. And pleading in bar of the said bill the defendant says:

That in and prior to the year 1845, one Daniel Carroll, of Dudding-ton, was indebted to the Bank of Washington, and the said bank had

obtained judgments against him to a large amount; previously, in the year 1829, the said Carroll had conveyed numerous lots of land in Washington City to Moses Tabbs, Roger C. Weightman, and Richard Wallach, and the survivors of them, upon trust to secure the payment of his debts, including his debt to the said Bank of Washington, with power to the said trustees and the survivors of them to sell the said lots of land at public or private sale, and apply the proceeds to the payment of said debts, which said deeds bear date November 2, 1829, and December 4, 1829, and are recorded in Liber W. B., No 28, folios 4 and seq., and folios 10 and seq., of the land records of Washington County in the District of Columbia.

Soon after the execution of these deeds the said trustees commenced to sell the said lots at auction; many were purchased, paid for, and conveyed to the purchasers, but a large number had been sold at the auction sale to one James Greenleaf, who paid for and received deeds for only a portion of them, leaving a large number unpaid for; he had paid nothing at the time of his death, which occurred in the year 18 .

When the trustees of the Bank of Washington, in 1845, desired to prosecute their demands against the said Daniel Carroll, they found this unsettled trust in their favor, in Tabbs and others, an obstacle in the way of their proceeding at law, and were advised that the fund created by the deeds of trust ought to be exhausted before they
15 should proceed to levy execution. And at the same time, Roger C. Weightman, the surviving trustee, was unable to resell the lots purchased and not paid for by Greenleaf, in consequence of the rights acquired by Greenleaf and claimed by his heirs. In the meantime taxes were accumulating upon the lots and there was no funds to pay them.

In order, therefore, to enable the surviving trustee, under Carroll's deeds, to settle and close up the trust, the trustees of the Bank of Washington undertook to find a purchaser for all the lots which Greenleaf had bought and not paid for, and to this end they arranged with William Fischer, the decedent mentioned in the bill of complaint, who agreed to become the purchaser of the said lots and give the bank the benefit of all the profits thereon, provided the bank would furnish the means for paying for the same and would bear all the risk of loss on the sale.

And thereupon the bank, through its agents, procured from the heirs of Greenleaf an assignment of all their interest and estate in the said lots to the said William Fischer and Roger C. Weightman, the surviving trustee under Carroll's deed, conveyed to him, the said William Fischer, the lots which had been bought but not paid for by Greenleaf, for the sum of six thousand five hundred dollars, for which sum the said William Fischer gave his promissory note, dated May 3, 1845, payable to his own order, sixty days after date, and endorsed the same to Roger C. Weightman, who endorsed the same to the Bank of Washington, without recourse, and the bank cashed the note, and in this way the surviving trustee under Carroll's deed disposed of all the residue of the property so conveyed to him and his co-trustees in trust, and received the consideration therefor, and was thus enabled to settle up and close the trust created by Carroll's said deeds.

And then, in pursuance of the agreement theretofore made between the trustees of the Bank of Washington and the said William
16 Fischer, the said William Fischer and Harriet, his wife, on the 14th day of May, 1845, executed the deed of trust set forth in the bill of complaint, whereby they conveyed to this defendant the parcels of real estate therein described, being the same purchased from the

trustees under Carroll's deeds upon trust to sell the same, whenever and as he should think proper, in any such way and upon any such terms, and upon any such security as he should think proper, to pay all taxes and expenses, and then to pay the promissory note hereinbefore mentioned, and to pay over the balance, if any, in such manner as the said William Fischer should, by instrument of writing under his hand and seal, direct to be made. And the said William Fischer, for himself and his heirs, further covenanted that they would neither do, nor cause to be done, any act whereby the said required sales should in any way be arrested, enjoined, or prohibited by any proceeding whatever.

And thereafter, on the 30th day of December, 1845, the said William Fischer, by an instrument of writing, under his hand and seal, of which a copy is hereto annexed, marked Exhibit W. G., No. 2, directed the surplus of any money arising from the sale of said lots to be paid over to the trustees of the Bank of Washington.

And this defendant says that neither the said William Fischer nor his said wife ever advanced or paid any money whatever for or on account of said property, or the expenses attending the purchase or management of the same, nor did they, or either of them, ever give any care, time, or attention to the said business, or do any act or thing in the premises beyond the execution of the promissory-note and deed of trust and written directions hereinbefore mentioned.

This defendant further says that he proceeded, in pursuance of the said deed, to make sale of the said lots as rapidly as it could be done, and applied the proceeds to the payment of said note, and, on
17 the 10th day of December, 1850, completed the payment of the same, and had a considerable balance remaining in his hands of the proceeds of the said property.

This defendant further shows that the said William Fischer was a man of prudence and of strict business habits, and, if he had any interest in the said property, he would not have failed to have asserted it. He lived several years after the execution of the deed of trust, and for about two years after the note had been fully paid; knew that the property was being sold off, for the said property was assessed to him, and the tax-bills continued to be made in his name and rendered to him, as is customary when property is conveyed upon trust to sell; yet he never made or asserted any claim to the property, or to the proceeds thereof.

That the said William Fischer, at his death, gave and devised all his property, real and personal, to the said Harriet Fischer, his wife, who survived him about seven years. She was well versed in business, and entirely competent to manage her estate. She was a party to the deed of trust mentioned in the bill, and was advised by the annual tax-bills, if in no other way, that the property was being sold off; but neither did she assert any right to the said property, or to the proceeds thereof.

And this respondent, as president of the Bank of Washington, prays in behalf of said bank all advantage of the matters and things hereinbefore stated, as if the same had been pleaded in due form in bar of this suit.

And, having fully answered, this respondent prays to be hence dismissed, with his reasonable costs, &c.

W. GUNTON.
JNO. D. McPHERSON,
W. D. DAVIDGE,
Sol'rs for Defendants.

DISTRICT OF COLUMBIA,
County of Washington, ss:

18 Before the undersigned, a justice of the peace, personally appeared William Gunton, and, being duly sworn, deposes and says that he has read the foregoing answer, and knows the contents thereof; that the matters therein stated, of his own knowledge, are true, and those stated upon the information from others he believes to be true.

JULY 7, 1870.

W'M MARTIN, *J. P.*

EXHIBIT No. 2, W. G.

Whereas by a certain indenture bearing date the fourteenth day of May, now last past, and made between William Fischer and Harriet, his wife, of the first part, and William Gunton, of the second part, certain squares and lots of ground lying in the city of Washington, and particularly specified in the said deed, were conveyed unto the said William Gunton upon trust, to sell the same at public or private sale, and to apply the proceeds thereof to the payment of a certain note therein described, and discounted by the trustees of the Bank of Washington;

And whereas it was by the said indenture further provided that any surplus of moneys which might remain after payment of the said note should be applied by the said William Gunton in such manner as the said William Fischer should, by any instrument of writing, under his hand and seal direct: Now, therefore, the said William Fischer doth hereby require and direct the said William Gunton to pay over all moneys which shall remain of the proceeds of the sales of the said squares and lots, after full payment of the note mentioned in the said deed, and after deducting a commission at the rate of ten per centum on the whole amount of such sales as a compensation for his services as trustee in disposing of the said property, to the trustees of the Bank of Washington, and for his doing so this shall be his authority.

In witness whereof the said William Fischer hath hereunto set his hand and seal this thirteenth day of December, in the year one thousand eight hundred and forty-five.

W'M FISCHER. [SEAL.]

Witness:
T. GUNTON.
THOMAS J. BURR.

19 *Replication. Filed Oct.* 15, 1870.

In the supreme court of the District of Columbia, the 15th day of Oct., 1870.

ZANTIZINGER *vs.* GUNTON ET AL. } Equity 1955.

The plaintiff joins issue upon the defendant's answer.

R. T. MERRICK,
FRANCIS MILLER,
Of Counsel for Defendant.

Testimony for defendant.

In the supreme court of the District of Columbia.

ZANTZINGER ET AL.
vs.
WM. GUNTON. } In equity.

DISTRICT OF COLUMBIA, *County of Washington, ss:*

Be it remembered that at an examination of witnesses, begun and held on the 24th day of Oct., A. D. 1871, and continued from time to time by adjournment until the 8th day of April, A. D. 1871, when the within depositions were taken, I, John J. Johnson, an examiner in chancery, did cause to be personally present at the Bank of Washington, in the city of Washington, in said District, William Gunton, Thomas S. Burr, Thomas E. Lloyd, and Charles A. James, to testify on the part and behalf of the defendant in a certain cause now depending in the supreme court of the District of Columbia, wherein Zantzinger et al. are complainants, and William Gunton, defendant.

J. J. JOHNSON, *Examiner.*

In the supreme court of the District of Columbia.

ZANTZINGER
vs.
GUNTON AND BANK OF WASHINGTON. } Eq. No. 1955.

20 Please take notice that the defendants in this cause desire the evidence to be adduced to be taken orally, and will proceed to examine such witnesses on the part of the defendant before J. J. Johnson, examiner in chancery, at his office No. 389 D street north, on the 24th day of Oct., at 1 o'clock p. m., as may then and there, or at any future adjournment thereof, be produced, to be used on the hearing of this cause, at which time and place you are hereby notified to attend and cross-examine said witnesses if you shall se fit.

McPHERSON & DAVIDGE,
For Defendants.

To Messrs. MERRICK & MILLER, *for complainants.*

MERRICK & MILLER,
For Complainants.

Ordered that *on* Monday, the 24th of Oct., be fixed for the examination *before*, of witnesses for the defendant, in this court at 1 o'clock p. m., at my office.

J. J. JOHNSON, *Ex'r.*

ZANTZINGER
vs.
GUNTON. } Eq. 1955.

On this 18th day of November, 1870, met pursuant to agreement, at the Bank of Washington, for the purpose of taking Dr. Gunton's deposition in the above-entitled cause. Present, Mr. McPherson, solicitor for defendant, and Mr. Miller, for complainants; when, at the request of

Mr. Miller, the examination was postponed till this evening at 6 o'clock p. m., at the same place.

JOHN J. JOHNSON,
Examiner in Chancery.

Met pursuant to above. Present, Mr. McPherson, for defendant, and Mr. Miller, for complainant; when Dr. William Gunton was duly sworn and testified as follows:

My name is William Gunton. I knew William Fischer in his lifetime. He married my sister, who afterwards survived him, and was his widow, Harriet Fischer. William Fischer came to this District between 1833 and 1835, and died in 1852. He carried on the stationery and fancy-goods business on Pennsylvania avenue, between 11th and 12th
21 streets. He resided over his store until he built and moved to the house on C street. I think his widow died in 1857. I knew Mr. Fischer well, and was in constant intercourse with him. I knew him both in a social and business way.

By Mr. McPherson:

1. Q. Mr. Fischer conveyed certain property to you in May, 1845. Please state all the circumstances attending that transaction.

(Objected to by Mr. Merrick.)

A. In prosecuting the suit of Mr. Daniel Carroll, we were met by the attorney of the opposite side (Mr. Merrick here objects to any conversation between the witness and the attorney) with the objection that unless the trust was completed you could not ascertain the amount that was due to the bank. I was acting by the advice of Mr. Hellen and Mr. Marbury, who were counsel for the bank. I was president of the board of trustees at that time.

2. Q. What trust is that to which you refer?

(Objected to.)

A. It was the trust of the two deeds given to Messrs. Tabbs and Wallach and Weightman, of November and December, 1829. There were two deeds, one exclusively for the bank, and the other subject to prior judgments, I think.

(The evidence of the contents of the deed objected to by Mr. Merrick unless produced.)

3. Q. By whom were those deeds made?

(Objected by Mr. Merrick.)

A. By Daniel Carroll, of Duddington.

4. Q. What measures did you take to meet that difficulty?

A. I looked over the reports of Pishey Thompson, the auditor. I found about (Mr. Merrick objects to any statements from the auditor's report) seven and eight thousand dollars of the sales of the trustees had not been complied with. Most of those were sales to James Greenleaf.

5. Q. What did you do next?

A. I then went to ascertain from the heirs of Greenleaf, and I found they were anxious to dispose of their interest whatever they had, for they were afraid it would take some of their own lots, and they were anxious about it. They told me to try and get somebody to take it off their hands, (conversation objected to,) and I got written authority from them to do so.

22 6. Q. Have you that writing in your possession?

A. Yes, sir.

7. Q. Please proceed, then, with your narrative.

A. I then went to Mr. Fischer and guaranteed him against any loss if he would take the property as agent for the bank. (Objected to by Mr. Merrick.) Under those circumstances he agreed to give his note for the amount of the unsold lots which Mr. Greenleaf had bought. He gave his note, and Mr. Weightman conveyed to him the property, after getting the consent of the Greenleaf heirs. Mr. Tabbs and Wallach were both dead at that time, and Weightman was the surviving trustee.

8. Q. Was there any other deeds made?

(Objected to by Mr. Merrick.)

A. Yes, sir So soon as Weightman made a deed to Fischer, Fischer gave a deed of trust to me as trustee, his wife granting her dower, and authorizing me to dispose of the lots as I pleased, as he should direct in writing.

(Objected to.)

That is, after the note was paid his note was out, and I had to see that the note was paid after my guarantee, and the balance was to be disposed of as he should direct in writing; the deed will show.

9. Q. Look at exhibit marked D, with the complainant's bill in this cause, and say whether that is a copy of the deed executed by Mr. Fischer?

A. Yes, sir. I don't think from that date to the day of his death I had five minutes' conversation with him on the subject.

10. Q. Did Mr. Fischer ever execute any instrument of writing under his hand and seal, directing what disposition should be made of the balance of the proceeds, after payment of his note? If so, produce that paper.

A. Yes, sir; he did; and I now produce it. The paper was drawn by my brother, and witnessed by him and Thomas J. Burr. I think he is living. My brother is dead. That is Mr. Fischer's signature signed to the paper. Mr. Fischer delivered that paper to me.

(Said paper is herewith filed and marked Exhibit W. G., No. 1.)

11. Q. What became of the note which Mr. Fischer gave to Weightman?

A. It was charged up. I don't know what became of it. It
23 was discounted by the bank and credited to the trustees right off before any money was received. I think you will find it with Mr. Thompson's second audit, showing that all the lots were settled for.

12. Q. In whose favor was the note drawn?

(Objected to.)

A. I can't say exactly now; but I have no doubt it was drawn in favor of Roger C. Weightman, the trustee; but the books will show.

I said at first, in reply to the question, that it was drawn to me, but Mr. James corrects me. I am pretty certain now that it was to Mr. Weightman, as he endorsed it without recourse; but the books will show how it was drawn, and I think the note itself will shortly be found. Mr. Weightman got an absolute credit for it at the time, and it was credited to Mr. Carroll's account at once.

(The testimony about the contents of the note and books objected to by Mr. Merrick.)

13. Q. Did you proceed under the deed to make sale? If so, state what you did.

A. Whenever any applicant offered I made sale. So that I got a little above the assessment I was satisfied.

I kept selling, and when I had to sell on credit I gave a deed and took a deed of trust and notes, and had the notes placed to my credit as trustee.

14. Q. Did you pay Fischer's note, and out of what fund?

A. I did; out of the first moneys derived from the sales, and placed to my credit as trustee.

15. Q. When did you finish paying Fischer's note?

A. I don't know, but the books will show. It was before Fischer's death.

(Objected to, as witness states there is written evidence.)

16. Q. How long after the payment of the note did Mr. Fischer live?

A. I can't say now, but in my answer I gave the dates; but I suppose some two years. I can't speak from memory.

17. Q. Have you been president of the board of trustees from 1845 to the present time?

A. I have, and president of the bank for ten years previous.

18. Q. Had you ever any conversation with Mr. Fischer in relation to the sale of the lots or to the proceeds, after he gave you the written directions which you have produced here?

24 (Objected to by Mr. Merrick.)

A. No, sir. I don't think he ever troubled himself about it.

Adjourned till 6 o'clock p. m., Monday evening next.

J. J. JOHNSON,
Examiner in Chancery.

Met pursuant to above. Present, Messrs. Davidge and McPherson for defendant. Counsel for complainant being absent the examiner adjourned.

J. J. JOHNSON,
Examiner in Chancery.

And to wit, on this 16th day of January, 1871, met pursuant to verbal notice. Present, counsel on either side, when the examination of Dr. Gunton was resumed, as follows:

19. Q. In your previous examination you have stated that you thought Harriet Fischer, the widow of William Fischer, died in 1857. Have you since taken means to refresh your memory as to that fact; and, if so, with what result?

A. I have refreshed my memory so far as to know that she died in 1859.

20. Q. When did the charter of the Bank of Washington expire?

A. In July, 1844.

21. Q. Before the expiration of the charter, and in view thereof, did the Bank of Washington, or its stockholders, take any steps towards continuing the business of banking on their individual responsibility; and, if so, what?

(Objected to by Mr. Merrick.)

A. They did. A public meeting was called of the stockholders by the directors, and a majority of them passed resolutions to continue the banking business.

(Answer objected to by Mr. Miller.)

22. Q. Was the business carried on after the expiration of the charter? and, if so, by whom and in what name?

(Objected to by Mr. Miller.)

A. The business was carried on after the expiration of the charter, by the board of trustees, my name being first. It was carried on in the name of the trustees of the Bank of Washington.

25 (Answer objected to by Mr. Miller.)

23. Q. Can you recollect what claim was set up in the Carroll suit by his attorney, in relation to sales made under the trust-deeds to Weightman, Wallach, and Tabbs, and in which the purchasers had failed to comply with the terms of sale?

(Objected to by Mr. Miller.)

A. I understood from our counsel in that suit, that Carroll insisted that until that was done it was impossible to ascertain what was due from Carroll to the bank.

(Answer objected to by Mr. Miller.)

24. Q. Was the Carroll suit then, to which you have referred, a proceeding against the bank for an account of moneys received under the deeds of trusts or otherwise?

(Objected to by Mr. Miller.)

A. Yes, sir.

25. Q. As to sales made by the trustees, and not complied with, was it sought in that suit to charge the bank with the proceeds of these sales?

(Objected to by Mr. Miller.)

A. Yes, sir.

(Answer objected to.)

26. Q. About what time was those sales made—can you tell me—about how many years before the Carroll suit?

A. The sales were made in 1830, 1831, 1832, 1833.

27. Q. Did you, as president of the Bank, take counsel as to the best course to be pursued in relation to these outstanding sales that had not been complied with?

A. Yes; after I had been spoken to by the counsel, I conferred with him as to the best means I should pursue.

28. Q. When did your counsel speak to you on the subject?

A. In April or May, 1845.

29. Q. What did he advise?

(Objected to by Mr. Miller.)

A. He advised that I should get some friend or other to buy all the property for the use of the bank.

30. Q. What property do you refer to?

A. Particularly to that bought by James Greenleaf, then deceased.

31. Q. That was the main part of the property sold under the deeds of trust, and as to which the terms of sale had not been complied with, was it not?

A. Yes, sir.

26 32. Q. Who, at this time, was the counsel of the bank?

A. Johnson Hellen was the regular counsel; he was assisted by John Marbury.

33. Q. Is Mr. Hellen dead now?

A. Yes, sir; he died seven or eight years ago.

34. Q. Which counsel spoke to you and gave you the advice as you have mentioned?

A. Johnson Hellen.

35. Q. After receiving this advice from your counsel, did you bring the subject to the notice of the trustees of the bank; and, if so, what was the result?

A. I did bring it to the notice of the bank, [and they rather supposed that the property would not bring the amount which was due by Greenleaf's heirs, but they left the matter to me.]

(All enclosed in brackets objected to by Mr. Miller.)

36. Q. Who composed the trustees of the bank at that time?

(Objected to by Mr. Miller.)

A. I think they were all alive at that time; they were myself, General Henderson, Jacob Gideson, Stanislaus Murray, John F. Callan, Benjamin F. Middleton.

[It is astonishing, I can't remember the rest of the names.]

(Mr. Davidge had requested the cashier of the bank to produce the journal or deed of trust, that the memory of the witness might be refreshed as to the other trustees, if any, and whilst that officer was absent, the witness made the remark enclosed in brackets, subsequently stating that he did not mean it, in answer to the interrogatory. Thereupon Mr. Miller insisted that the remark should be entered, which is accordingly done by me, in opposition to the objection of Messrs. McPherson and Davidge.

J. J. JOHNSON,
Examiner.)

37. Q. Are those all the trustees living, at the time referred to, that you can recollect?

A. Yes, sir.

38. Q. How many of them are living now?

A. Only one besides myself.

39. Q. What is his name?

A. John F. Callan.

27 40. Q. What is the condition of his health, bodily and mentally?

A. He is very much enfeebled in body and mind; his memory is entirely gone.

41. Q. Is there any circumstance that recalls to your memory the fact that you submitted to the trustees the advice of their counsel, that they should take the property sold under the deeds of trust, but not settled for?

[A book was here handed the witness by Mr. Davidge.]

A. Yes; this entry in the tickler, in the handwriting of Jacob Gideon.

42. Q. Will you read the entry?

(Objected to by Mr. Miller.)

A. May 6th, 1845; can realize now by good notes $6,065.84; the Dr. expects to realize $15,000!!! If this is realized, the president and cashier each to receive $1,000.

(Answer objected to by Mr. Miller.)

43. Q. Did M. Gideon approve or oppose the recommendation or advise of counsel, that the property should be taken off the hands of purchasers for the benefit of the bank?

(Objected to by Mr. Miller.)

A. He opposed it.

(Answer objected to by Mr. Miller.)

44. Q. On what ground did he oppose it?

(Objected to by Mr. Miller.)

A. On the ground that he did not think it would realize that amount.

(Answer objected to by Mr. Miller.)

45. Q. After the matter had been left to you by the trustees, did you see William Fischer; and, if so, what passed between you?

A. I called on Mr. Fischer, and told him the bank wanted to buy the property to settle Mr. Carroll's account, and I wanted him to act as the agent of the bank, to have it purchased in his name, and I would guarantee him from all loss. He said he would comply with the request.

(All of the conversation objected to in this answer.)

46. Q. Was the property subsequently conveyed to William Fischer, in pursuance of that arrangement?

A. It was.

47. Q. Who procured the deed executed by the heirs of Greenleaf, in favor of Fischer, for the property sold to James Greenleaf and not paid for.

28 A. Mr. Johnson Hellen drew the deed, at the instance of the trustees of the bank.

48. Q. Did he likewise draw the deed from Roger C. Weightman surviving trustee, to William Fischer, for the said property?

A. Yes, sir.

49. Q. At whose instance?

A. At my instance, in behalf of the trustees of the bank.

50. Q. Who paid Mr. Hellen for drawing these conveyances?

A. I did, in behalf of the trustees of the bank.

51. Q. I wish you would state the character of the book in which the entry by Jacob Gideon was made?

A. It is the tickler which was before the board every week; the book related to discounts made by the board.

52. Q. Where is the entry made which you read to the examiner?

A. It is made on a fly-leaf of the book.

53. Q. From the time of your arrangement with William Fischer and the conveyances in pursuance thereof, what claim, if any, did William Fischer set up to the property?

A. Not any.

54. Q. By whom was the original draft of the appointment or directions of William Fischer, filed in this cause with the examiner, made?

A. By Johnson Hellen.

55. Q. At whose instance?

A. At mine, as president of the trustees of the bank.

56. Q. Look at the paper now shown you and state what it is?

(Said paper being marked and filed Exhibit W. G., No. 2, J. J. J., Jan. 1, 1871.)

A. This is the original draft.

57. Q. Is that in the handwriting of Mr. Hellen?

A. Yes, sir.

58. Q. Who paid Mr. Hellen for the original draft?

A. I paid him, as trustee under deed of trust, and it was charged in my account as trustee; he made out his account against me as trustees, and I paid it. [Under the deed of trust all expenses had to be paid first, and the bank was to get the residue.]

(All enclosed objected to by Mr. Miller.)

29 59. Q. You say that William Fischer died in 1852, and that his widow died in 1859; during these seven years, what were your relations with his widow?

A. The most amicably and friendly.

60. Q. How often did you see her?

A. I could hardly say; weekly, and daily sometimes.

61. Q. Was she aware of the arrangement made by you with her husband, under which he was to take the conveyance of the Greenleaf property for the benefit of the bank?

A. Yes, sir; fully.

62. Q. How did she get her information?

A. She got it at the time when the contract was being entered into.

63. Q. What contract do you mean?

A. I mean the deed of trust which she and her husband gave to me

64. Q. Did you subsequently converse with her on the subject?

A. Yes, sir.

65. Q. Can you recollect any occasion?

A. It was almost every time when corporation taxes had to be paid by me.

66. Q. How did corporation taxes give rise to these conversations?

A. Because I had the trouble to separate his accounts for his own property from this trust property.

Adjourned till Wednesday next, the 18th inst., at 3 p. m.

J. J. JOHNSON,
Examiner in Chancery.

Met pursuant to above. Present, counsel on either side, and adjourned till Thursday evening at 7 o'clock p. m.

J. J. JOHNSON,
Examiner in Chancery.

Met pursuant to above. Present, counsel on either side, when the examination-in-chief was resumed as follows:

67. Q. You have stated that the original draft of the appointment or directions of Mr. Fischer was drawn by Mr. Johnson Hellen. After you made the arrangement with Fischer, of which you have testified, was the mode of carrying into execution that arrangement left to the advice and judgment of Mr. Hellen, the counsel for the bank?

A. It was.

68. Q. For what purpose was the appointment or directions of Mr. Fischer drawn? What was it intended to accomplish?

(Objected to by Mr. Miller.)

A. It was intended to accomplish the result, that after the note and expenses were paid, the residue should enure to the trustees of the bank for its benefit.

(Answer objected to by Mr. Miller.)

68. Q. Then the purpose of the directions or appointment was to carry into effect the arrangement which, under advice of counsel you had previously made with Mr. Fischer, and in accordance with which the property had been conveyed to him?

(Objected to by Mr. Miller.)

A. Yes, sir.

70. Q. What was the pecuniary condition of Mr. Fischer for several years before his death, say six or seven years?

(Objected to by Mr. Miller.)

A. It was undoubtedly good—first rate I should say.

71. Q. Was he a man of large means?

A. I should say so. It depends on what you mean by large. He was a man who owned property much more than his debts. His credit was undoubted.

72. Q. When did your brother, Thomas Gunton, die?

A. In December, 1853.

73. Q. What were his relations with Mr. Fischer and his wife during Fischer's life, and with his widow after his death?

A. Of the most intimate character. He visited them almost every day.

74. Q. Was your brother, Thomas Gunton, aware of the nature and

purpose of the arrangement entered into by you with Mr. Fischer for the benefit of the bank?

A. Yes, sir; he was, thoroughly.

75. Q. What was his capacity, as a man of business?

A. He was thoroughly acquainted with business, and had read law, although he never practiced. Before coming to America he had been a chancery clerk at Norwich, for many years.

76. Q. I would ask you whether Mrs. Fischer, for several years before her death, was in great need of money, and, if so, from what cause?

31 (Objected to as impertinent and irrelevant.)

A. She was, in consequence of the misbehaviour of Mr. Zantzinger, her son-in-law. He became a defaulter to the Government of the United States in the sum of nearly ten thousand dollars.

(Answer objected to as impertinent, irrelevant, and scandalous.)

I ought to state that Mr. Zantzinger had in his possession about $2,000, which reduced the amount of defalcation to be made up to about $8,000.

77. Q. Did Mrs. Fischer borrow the money to make up the balance; and, if so, from whom?

(Objected to by Mr. Miller.)

A. She borrowed it from different banks, on my endorsement, in the first instance; and afterwards, when the banks had to be paid, the Steamboat Packet Company loaned her the money on my endorsement, and which still remains unpaid.

(Answer objected to.)

78. Q. How long was this before her death that she had to raise this money?

A. About five or six years.

79. Q. Now tell me whether at any time Mrs. Fischer ever claimed any interest in the property conveyed to her husband by the Greenleaf heirs, and by him to you in trust, and which was covered by the directions or appointment in evidence, or in the proceeds of the property.

A. She never did.

80. Q. I think you have stated that she well knew the arrangement entered into with her husband by you in behalf of the trustees of the bank?

A. Yes, sir.

Examination-in-chief here closes.

Adjourned till Tuesday, the 24th inst., at 7 p. m.

J. J. JOHNSON,
Exam'r in Chancery.

Met pursuant to above. Present, counsel on either side, when Mr. Miller, for complainants, commenced the cross-examination as follows:

31. Q. Doctor, where is the note that was given in payment of this property?

32 A. It is in the iron chest in the vault.

82. Q. Produce it.

A. I here produce it.

(Said note is herewith filed, and marked Exhibit W. G., No. 3.)

83. Q. When you say the amount of this note, when it was discounted, was credited to the trustees, do you mean to Mr. Weightman, the surviving trustee?

A. It certainly was taken by Mr. Weightman, as cash, and we discounted it, and it was credited to Daniel Carroll.

84. Q. Was any other property included in the Fischer purchase beside that which had been bid off to Greenleaf, and not paid for?

A. No, sir.

85. Q. Was any other consideration paid for this property than this note?

A. No, sir; except my personal guarantee to save him harmless against loss.

86. Q. What was the form of that guaranty of yours to Fischer?

A. Nothing but my personal promise, on the part of the bank, to save him harmless.

87. Q. Verbal or written?

A. Verbal.

88. Q. What reason did Mr. Hellen give for his advice to you to get some friend or other to buy, for the use of the bank, the property bid off to Greenleaf, and unsettled for?

A. To facilitate the settlement of the Carroll account in court.

89. Q. What reason did he give for the use of a friend to make that purchase?

A. Because he thought that if it was bought by the bank it would create another difficulty in the settlement of the account.

90. Q. What difficulty?

A. The difficulty in the settlement of Carroll's account in court.

91. Q. What was the nature of that difficulty?

A. The opposing counsel of Mr. Carroll had raised the objection that you could not tell what Mr. Carroll's indebtedness was until the incomplete sales were settled.

92. Q. I want to know the necessity of a friend in making the purchase?

33 A. That was Mr. Hellen's counsel to me.

93. Q. What reason did he give for the use of a friend?

A. He thought it would be the best way to arrange it.

94. Q. Why did he think the interposition of a friend was necessary?

A. I never asked him for his reason.

95. Q. Did he ever volunteer a reason?

A. Only he thought that the best course.

96. Q. Why did not the bank purchase this property for itself?

A. Because their counsel advised a different course.

97. Q. Was anything said about the bank making the purchase, in the conversation with Mr. Hellen?

A. None that I know of.

98. Q. Was the question of the bank making the purchase itself considered in any of the meetings of the trustees, or in conversation with your other counsel, Mr. Marbury?

A. No; except in the manner which was indicated by the counsel, Mr. Hellen.

99. Q. You have stated that the charter of the bank expired in 1844; in what manner and in what authority was the business of the bank continued after that date?

A. By order of the stockholders, in general meeting assembled. The business of the old bank passed to the new bank by deeds and resolutions of the stockholders.

100. Q. Have you the written authority of the Greenleaf heirs to effect a sale of their interest in this property; and, if so, can you produce it?

A. I had it; and I think Mr. McPherson has it.

101. Q. You state that you paid for the conveyances from Weight-

man to Fischer, on behalf of the trustees of the bank; are you clear in your recollection about that?

A. I paid him thirty dollars for drawing six deeds. He charged the bank much more for services.

102. Q. In what capacity did you pay for the deeds; as agent of the board of trustees, or as trustee under the deed of trust?

A. I have charged it in my trust-account.

103. Q. In whose name is the property assessed at this time—what is left of it?

A. Mrs. Harriet Fischer, I think.

104. Q. Why has it never been changed in the assessment to the Bank of Washington?

34 A. Because the corporation officers said they could not do it or would not do it, after frequent applications by me to have it done. It could not have been changed to the Bank of Washington. It might have been to me as trustee.

106. Q. What reason did they assign for refusing to make this change?

A. Not any at first; subsequently they said there was a difference between a deed in trust and a deed of trust. I had no trouble when Mr. Fischer was alive, for he paid the taxes on his own property himself.

107. Q. In that entry in the tickler, "can realize now by good notes $6,065.84," what were the good notes referred to?

A. It is most impossible for me to tell what they referred to. There is no doubt an offer was made to give that much money for it. I mean for the Greenleaf property.

108. Q. Did it refer to the Fischer note?

A. That is more than I can say, sir. It was a mere memorandum that he made.

109. Q. At this time had the bank made the arrangement with Mr. Fischer?

A. I do not know that they had actually made it, but it was understood with Mr. Fischer. I don't know that the papers had been actually executed.

110. Q. Had any other party offered any notes which could be used in the settlement of that matter?

A. Not to my knowledge.

111. Q. You would have known if other offers had been made, would you not?

A. If any formal one had been made I should.

112. Q. What was the amount of the alleged defalcation of Mr. Zantzinger?

A. I think it was about $10,000, sir.

113. Q. From what was the $2,000 you spoke of in your examination-in-chief derived?

A. From Mr. Zantzinger himself.

114. Q. Was not Mrs. Zantzinger at that time the owner of the house in which they lived?

A. I think not.

115. Q. Who was the owner of it?

A. Mr. Fischer, I think. He built it for them, but I don't think he gave a deed to them—that is my impression.

35 116. Q. Was Mr. Fischer alive at that time?

A. No, sir.

117. Q. Of course Mr. Fischer did not own it. Who was the owner, if you can remember?

A. I should say the estate of Mr. Fischer was the owner of it. Mrs. Fischer was the executrix, and I think she sold it.

118. Q. Had you anything to do with the sale of that property?
A. I had.
119. Q. In what way were you connected with it?
A. The house was sold to Mr. William R. Riley, and I was the trustee to secure the payment of the purchase-money.
120. Q. By whom was it sold?
A. It must have been sold by Mrs. Fischer, as executrix.
121. Q. Do you know whether any of the proceeds of the sale of that property were used in arranging the difficulties of Mr. Zantzinger?
A. It was sold for that purpose, sir; but Mrs. Fischer's wants and Mrs. Zantzinger's, after the death of Mrs. Fischer, took all the proceeds.
122. Q. When did this sale take place?
A. I can't tell now; I can see by the account in the ledger. The property is on E street north, one lot from the corner of 9th street.
123. Q. Did Mr. Riley make all his payments?
A. Yes, sir.
124. Q. What was the nature of the trust-deed in which you were the trustee for?
(Objected to by Mr. Davidge, because the deed is the best evidence, and because further the enquiry is utterly unconnected with the examination-in-chief, or the issues in this cause.)
A. I don't know.
125. Q. Was it an ordinary trust-deed to secure the payment of money?
(Objected to for same reasons above.)
A. I don't know; the deed will show.
Adjourned till the 30th inst., at 7 p. m.

J. J. JOHNSON,
Examiner in Chancery.

36 Met pursuant to above, and adjourned till Tuesday, the 14th of February, 1871, at 7 o'clock p. m.

J. J. JOHNSON,
Examiner in Chancery.

Met pursuant to above. Present counsel on either side, when the cross-examination was resumed, as follows:
126. Q. Doctor, what was paid to William Fischer for the execution of the deed of trust by the trustees of the Bank of Washington?
A. Nothing.
127. Q. Was anything paid to him for the appointment or directions filed as an exhibit?
A. Nothing.
128. Q. Were these papers all executed together; the notes, deed of trust, and the appointment?
A. They were all executed, one after another; I can't tell; perhaps at the same time; they might have been a day apart; I can't say; they were all drawn up by Mr. Hellen, [but the appointment was not executed until December 30th, 1845.]
(Mr. Miller states that the cross-examination is without waiving his objections made to the examination-in-chief.)
While this deposition was being read over to this witness by me, the words in brackets on page 45 were added by the witness. [Printed page 38.]

W. GUNTON.

Sworn to and subscribed before me.

J. J. JOHNSON,
Examiner in Chancery.

Testimony of Thomas S. Burr.

Met pursuant to above. Present, counsel on either side, when THOMAS S. BURR was duly sworn, and deposes and says:

I reside in this city. I was born here, and am 47 years of age. I knew the late William Fischer, and was clerk in his store for several years. He carried on the stationary and musical instrument business. I was clerk for him from January, 1844, to December, 1847.

37 Thomas T. Tongue preceded me as clerk, as far as I know. I don't think any one came in between us. A young man named Dyson followed me, and Mr. Thomas E. Lloyd followed him. I recognize the paper now shown me, [G. W. No. 1, Nov. 18, 1870, J. J. J., examiner.] The handwriting of the body of the paper is that of Thomas Gunton. The signature, William Fischer, is in his handwriting. He did not sign the paper in my presence, but acknowledged the signature to be his, and asked me to witness it, which I did. He and Mr. Thomas Gunton were together at the time. This paper was acknowledged by Mr. Fischer to me in his store. I am well acquainted with his handwriting, having repeatedly seen him write, and I know the handwriting to be his. Mr. Thomas Gunton acknowledged his signature as witness at the same time Mr. Fischer acknowledged his. They came together. I am well acquainted with the handwriting of Mr. Thomas Gunton, and I know the signature appended to the paper, as witness, is his genuine handwriting. The signature, Thomas S. Burr, as witness, is my own, made at the request of Mr. Fischer. [I always regarded Mr. Fischer as a very methodical business man, carefully entering on his books all the minutest business transactions.]

(All enclosed in brackets objected to by Mr. Merrick.)

Q. What opportunity had you of knowing the business habits of Mr. Fischer?

(Objected to by Mr. Merrick as irrelevant and incompetent.)

A. I was in daily intercourse with him during the time I mentioned—from 1844 to 1847. There was no other clerk in the store except myself until about a week before I left, when Mr. Dyson came to be instructed.

(Answer objected to as irrelevant and incompetent.)

Q. During your employment in the store of Mr. Fischer, what access, if any, to his books did you have?

(Objected to for same reasons above.)

A. I had perfect access to them. They were not kept in a safe. They were kept on the desk.

Q. Was it your duty to make entries in the book?

(Objected to for reasons stated above.)

A. It was my duty to make entries of all articles sold by me to be charged—the usual duties of a clerk in a store.

38 (Answer objected to by Mr. Merrick.)

Q. Now, state what the business habits of Mr. Fischer were.

(Objected to for same reasons above.)

A. They were methodical. He was very precise in entering on his books his daily business transactions.

Q. Look at the books now shown you and state if you recognize them and what they are.

A. Ledgers A, B, C, and D of Mr. Fischer. I recognize ledger C that was in use while I was there. The day-book from June, 1844, to April, 1847—that was in use when I was there. There is another day-book dated March 22, 1842, to June 1, 1844. Another day-book beginning July 22, 1850, to the 6th of February, 1852—that was the

last entry. This book was after I left the store, but I recognize the handwriting of the majority of items to be in Mr. Fischer's handwriting. The day-book from March 22, 1842, to June 1, 1844, was in use before I went to the store. After I went to the store I commenced making entries in it. This book was in use when I went into the store as clerk. I know nothing about Ledger D. Ledgers A and B I recognize as being the books at the store of Mr. Fischer.

(All of this testimony objected to as being irrelevant.)

Cross-examination waived by Mr. Merrick.

T. S. BURR.

Sworn to and subscribed before me this 16th day of February, 1871.

J. J. JOHNSON,
Examiner in Chancery.

Testimony of Thomas E. Lloyd.

Appeared also THOMAS E. LLOYD, who, being duly sworn, deposes and says:

I reside in this city and have all my life. I am 41 years of age.

I knew the late William Fischer well. I was clerk in his store from some time in 1848 until February, 1852, when he died.

I think Dunbar Dyson was clerk before I went there, and M. Burr preceded Dyson.

39 Q. What opportunities had you of knowing the business habits of Mr. Fischer in respect of method and precision?

(Objected to by Mr. Merrick as incompetent and irrelevent.)

A. I was in daily intercourse with Mr. Fischer from 1848 to the day of his death. There was nobody else in the store besides myself. I kept his books from 1849 up to the day of his death. I think the greater part of the entries are in my handwriting in the ledger after 1849.

I had access to all his books. Mr. Fischer was at the store daily. He attended, in common with me, to the duties of the store.

(Answer objected to by Mr. Merrick.)

Q. State fully what were the business habits of Mr. Fischer in respect of method and accuracy.

(Objected to for reasons above stated.)

A. I regarded Mr. Fischer as being a very careful business man; so much so that he entered in his day-book his household expenses and even moneys that he paid his wife; the entries of which will be found in the ledger in my handwriting transcribed from the day-book in Mr. Fischer's handwriting.

(Answer objected to for reasons above stated.)

Q. Look at the books now shown you, and state whether you recognize them and what they are.

(Objected to for reasons above stated.)

A. I recognize Ledger D. I also recognize the day-book beginning July 22d, 1850, and running to February 6th, 1852.

I had nothing to do with ledgers A, B, and C, but recognize the handwriting of Mr. Fischer in them. The day-book shown me, running from March, 1842, to June, 1844, and from June, 1844, to the 29th of April, 1847, I had also nothing to do with, but I recognize the greater part of the entries in these books as in the handwriting of Mr. Fischer.

(Answer objected to for reasons stated above.)

Cross-examination waived by Mr. Merrick.

THOMAS E. LLOYD.

Sworn to and subscribed before me this 16th day of February, 1871.

J. J. JOHNSON,
Examiner in Chancery.

40 *Testimony of Charles A. James.*

Appeared, also, Charles A. James, who, being duly sworn, deposes and says: I reside in this city. I am 38 years of age. I am cashier of the Bank of Washington. I was appointed as such on the 1st of July, 1870, and for about two years before I was assistant cashier.

Q. Look at Ledger C of William Fischer, now shown you, under date of May 3d, 1845, or under any date in said month, and state whether any entry is made of the note of that date, made by Mr. Fischer, to his own order, and endorsed by Roger C. Weightman, and for six thousand and sixty-five dollars and eighty-four cents, with interest.

(Objected to by Mr. Merrick.)

I find no such note, either in his account of bills payable or in his individual account.

Q. Have you before you his account of bills payable? If so, state the periods from which and to which it runs in that ledger.

(Objected to by Mr. Merrick.)

A. I have. It runs from the 5th day of January, 1841, to and including the 23d day of December, 1847.

Q. Have you now before you his individual account in that ledger? If yea, state the period covered by it.

(Objected to by Mr. Merrick.)

A. I have. It runs from the 7th day of January, 1841, up to and including the 25th day of December, 1847.

(Answer objected to.)

Q. Have you carefully examined both these accounts for any entry relating to the note in question? If yea, with what result?

(Objected to by Mr. Merrick.)

A. I have. I find no entry of such note.

(Answer objected to.)

Q. Is there in that ledger any account of Mr. Fischer with Dr. Gunton, or with Roger C. Weightman?

(Objected to by Mr. Merrick.)

A. There is an account with William Gunton, also with Roger C. Weightman.

(Objected to.)

Q. State the periods covered by those accounts respectively.

(Objected to by Mr. Merrick.)

41 A. The former running from January 2d, 1841, to and including the 10th day of November, 1847; the latter, from the 9th of January, 1841, to and including the 27th of February, 1843.

(Objected to.)

Q. Is there in either of those accounts any entry in relation to the above note, or in relation to any purchase by Mr. Fischer of real estate?

(Objected to by Mr. Merrick.)

A. I find none.

(Objected to.)

Q. Now turn to the day-book covering May, 1844, and the latter part of April, in the same year, and state whether there is any entry touching the note referred to, or the purchase by William Fischer of real estate from Roger C. Weightman.

(Objected to.)

A. I have examined the day-book from the 12th of April, 1845, to the 1st of June, in the same year, and find no such entry.

(Objected to.)

Adjourned till Wednesday, 28th March, 1871, at 7 o'clock, p. m.

J. J. JOHNSON,
Exam'r in Chancery.

(For continuation of Mr. James' testimony see p. 61, printed page 44.)

Met pursuant to above. Present, counsel on either side, and thereupon ARTHUR FENDALL, being duly sworn, deposes and says:

(Mr. Davidge here suspends the examination of Mr. James to examine Mr. Arthur Fendall.)

Q. Did you examine at my instance the land records of this District for all the conveyances of real estate to the late William Fischer from 1832 to 1853, inclusive?

A. I did, sir.

Q. Have you an abstract of those conveyances? If so, produce it.

A. I have two abstracts—one, of the deeds made by the cor-
42 poration to William Fischer, and one of the purchases made by him from other parties, from the year 1832 to 1853, inclusive?

Q. What do you mean by corporation deeds?

A. I mean deeds of property purchased at tax sales.

Q. Produce your abstract of property purchased from and conveyed by parties other than the corporation?

A. Here it is.

(The said abstract is herewith filed, and marked Exhibit A. F.)

Cross-examination waived.

ARTHUR FENDALL.

Sworn to and subscribed before me, this 28th day of March, 1871.

J. J. JOHNSON,
Exam'r in Chancery.

EXHIBIT A. F.

Stephen P. Franklin. Deed to William Fischer. Dated 19th Jan'y, 1843. Recorded 20th Jan'y, 1843. [L. C., p. 58. D. B.] Conveys lot 16 & 17 in sqr. 216. Consideration, $500.00. Recorded W. B., No. 99, fol. 235.

Richard Joyce et ux. Deed to William Fischer. Dated 10th Ap'l, 1843. Recorded 11th Ap'l, 1843. [L. C., p. 58. D. B.] Conveys lot 2 in sqr. 223 in Davidson's subdivision of lots in said square. Consideration, $880.20. Rec. W. B. No. 100, fol. 185.

W'm W. Corcoran. Deed to W'm Fischer. Date 21 Ap'l, 1843. Rec. 22 Ap'l, 1843. [L. C., p. 58, D. B.] Conveys north part of lot 7 in sqr. 405. Consideration, $339.73. W. B. 100, fol. 320

Henry M. Morfit. Deed to W'm Fischer & Lewis Johnson. Date 7 Nov'r, 1844. Rec. 23 Nov'r, 1844. [L. C., p. 439, D. B.] Conveys to them as tenants in common lots 20 & 21 in sqr. 491. Consideration, $3,200. W. B. No. 112, fol. 355.

Provey Gadsby, Ja's Eakin, & Alex. McIntire. Deed to W'm Fischer. Dated 28th Ap'l, 1845. Recorded 30th Ap'l, 1845. [L. C., 439. D. B.] As executors of John Gadsby. Conveys whole of square 139. Consideration, $1,634.42. W. B. No. 115, fol. 443.

John Marbury, tr. Deed to William Fischer. Dated 19 May, 1845. Recorded 16 June, 1845. [Parties to suit & No. of cause not given. L. C., 375. D. B.] As trustee by decree of [circuit] court [sitting in chancery] of 28th Ap'l, 1843, [to sell real estate of John Brian in G'town.] Conveys lot 10 in sub. of lot 12 in orig. plan of Georgetown. Consid. $1,104. W. B., No. 117, fol. 227.

W. Cranch, W. G. Elliott et ux. Deed to William Fischer. Date 11th June, 1845. Rec. 16 June, 1845. [D. B. June 10, '45. L. C. 440.] Recites that on 19th of March, 1833, Cha's Carter Lee, under authority of decree of c'c't court of D. C. for county of Washington, did sell, & by indenture of that date convey, to W'm Cranch & Rich'd Wallach, trustees, & to survivors of them, & heirs and assigns of them, lot No. 28, in res. No. 10, in city of Washington, to hold same in trust & for use of Mrs. Margaret D. Eliot, & permit her to receive rents, etc., & to dispose of said lot by deed under her hand; that Rich'd Wallach has since died, leaving Cranch surviving trustee; that whereas said Margaret hath heretofore sold east part of said lot, with buildings, &c., reserving only right to use west gable and wall of house erected thereon; and whereas she has agreed to sell remaining moiety of said lot to said party of third part, (i. e., Fischer,) & doth by these presents direct same to be conveyed to him, together with her right to the said gable wall, by proper instrument: This indenture witnesseth that said W'm Cranch, surv'g trustee, in consideration of $5.00 in hand paid, & $1,550 paid by said party of 3rd part (Fischer) to Mrs. Eliot, hath sold, etc., "all that certain piece and parcel of land lying in said city of Washington, which is known as the western moiety or half part of the said lot No. 28 in reservation No. 10, together with all the rights," &c., "including the right to use the gable end of the three-story brick house standing on a part of eastern line of said lot, which is now owned & occupied by the Hon. Tho's Benton. To have and to hold said western half of the said lot, with all rights," &c., "together with the right to the said wall." W. B., No. 117, fol. 229.

R'ger C. Weightman, surv'g tr., & David A. Hall. Deed to W'm Fischer. Date 3rd May, '45. Rec. 22 July, 1845. Conveys "all right, title, & interest of heirs of Ja's Greenleaf" to lots in following squares, on his paying purchase-money unpaid & interest, viz: 582, 576, 635, 636, 826, 638, 639, sqr. e. of sqr. 643, all 647, sqr. e. of sqr. 667, 679, 680, 681, 683, 684, 685, 687, 689, 691, 693, 694, 700, 720, 721, 722, 723, 724, 725, 732, 743, 753, 756, 759, 780, all 783, all 853. W. B. No. 118, fol. 11.

Margaret T. Dale & Walter C. Livingston et ux. Deed to William Fischer. Date 23 May, 1845. Record' 22 July, 1845. Margaret T. Dale, Walter C. Livingston, and Mary L. Livingston, "heirs at law of James Greenleaf," in consid. of 5.00, convey, release, etc., to W'm Fischer, lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, & 12, in sqr. 582; lot 9 in sqr. 576; lots 7, 8, 13, 14, 15, 16, 17, 18, 20, & 21 in sqr. 635; lots 3, 6, 10, 16, 17, 18, in sqr. 636; lots 4, 5, & 7 in sqr. 638; all sqr. 647; lot 3 in sqr. e. of sqr. 667; lot 1, sqr. 679; lots 1, 2, 3, 4, 10, in sqr. 680; lot' 3, 12, in sqr. 681; lot' 8, 10, 11, sqr. 683; lot' 4, 7, 8, sqr. 684; lots 4 & 9, sqr. 685; lots 5, 13, 14, 18, sqr. 687; lots 3, 4, 5, 6, 9, 10, sqr. 689; lot 9, sqr. 691; lot 5, sqr. 693; lot 6, sqr. 694; lots 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, in sqr.

700; lots 1, 2, 3, 4, 10, 11, 12, 13, 20, 21 & 22 in sqr. 720; lots 5, 6, 7, 8, 9, 10, 16, 17, 18, 19, & 20, sqr. 721; lot 1 in sqr. 722; lots 5, 6, 7, 8, 9, & 10, sqr. 723; lots 4, 5, 8, 9, 13, 14, 18, 19, 22, 23, 24, & 27, in *in* sqr. 724; lots 8, 9, 20, 21, 25, 26, 30, & 31, sqr. 725; lots 18 & 19, sqr. 732; lots 17, 20, 23, 24, sqr. 743; lots 1, 2, 3, 16, 17, 18, 19, 20, 21, 22, 23, & 24, sqr. 753; lots 3, 4, 5, 6, 7, 8, in sqr. 756; lots 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, in sqr. 759; lots 4, 5, 6, 7, in sqr. 780; lot 7, sqr. 826; all sqr. 783; & all sqr. 853. W. B. No. 118, fol. 26.

NOTE.—This appears to be same property as mentioned in preceeding deed of Wightman & Hall to Fischer, dated 3rd May, 1845, & rec. W. B. 118, fol 11.

Andrew B. McClellan. Deed to W'm Fischer. Dated 25 Nov., 1845. Recorded 6 Dec., 1846. [L. C., p. 440. D. B.] Conveys lot 4, in sqr. 57, (as deeded by corporation on 13 Nov'r, 1838, to McClellan.) Consideration, $29.50. W. B. 122, fol. 83.

Michael Larner, tr. Deed to William Fischer. Dated 7th May, 1846. Recorded 8th May, 1846. [L. C., 487. D. B.] Conveys east half of lot No. 2, in sqr. 455. Consideration, $1,125. W. B., No. 122, fol. 158.

Richard Potts et al. Deed to William Fischer. Dated 19 March, 1847. Recorded 21 Ap'l, 1847. [L. C., 519. D. B.] Conveys lot 11 in sqr. 80. Consideration, $184.00. W. B., No. 133, fol. 253.

W'm Gunton. Deed to W'm Fischer. Dated 1st June, 1847. Recorded 24 June, 1847. Recites: Gunton purchased lot 10, in sqr. 756, for $14.61, on 13 Aug., 1834, at tax-sale, & he paid that sum to collector. That said lot, not being redeemed in 2 years, he rec'd corporation deed to same on 4th June, 1840; that he purchased lot for Fischer, & with money furnished by Fis'her for that purpose, & in consid. of premises & $1.00 he now conveys to Fischer lot 10 in sqr. 756. W. B., No. 135, fol. 390.

John F. Callan. Deed to W'm Fischer & Lewis Johnson. Dated 21 Jan'y, 1848. Recorded 29 June, 1848. [L. D., 12.] Conveys part of lot 5, in sqr. 491. Consideration, $7,800; and, in addition to above consideration, subject to $2,200, with interest, to be paid J. W. V. Maury, and to all terms & conditions of indenture made by Henry Hoban to Jourdan W. Maury, trustee, dated 30 Aug., 1840. W. B., 140, fol. 457.

Andrew Rothwell. Deed to William Fischer. Dated 16 June, 1851. Recorded 20 May, 1852. [L. D., 155. D. B.] In consideration of $960.00, conveys lot No. 10, in sqr. 407, viz, all that piece designated as part of lot 10, in sqr. 407, beginning on E street at the n'east corner of the lot, running thence south 75 f't; thence west fifty feet to 9th st.; thence north 3 feet; thence east 25 feet; thence north 72 feet to E street; thence east 25 feet to beginning; containing 1,950 sqr. feet, as shewn by certain indenture of 26 Feb'y, 1844, made between Sarah Tate, of one part, and Andrew Rothwell, of other, was conveyed to Andrew Rothwell in fee." J. A. S., No. 40, fol. 509.

Sarah Tate. Deed to William Fischer. Dated 28 Oct., 1851. Recorde' 6th Oct., 1852. In consideration of $1,200, hath conveyed, released, granted, &c., "all that piece or parcel of ground of her, the said Sarah Tate, lying in the city of Washington, and being part of lot 10, in sqr. 407, bounded on the north by E st. north, & and on the east and south by the other part of said lot, heretofore sold & conveyed by the said Sarah Tate to Andrew Rothwell, and now belonging to said W'm Fischer, and on the west by 9th s't west, containing 1,800 sqr. feet." J. A. S., No. 46, fol. 91.

Alexander McIntyre & Henry M. Morfit. Deed in fee to William Fischer. Dated 9th May, 1845. Recorded 14 May, 1845. As trustees

convey south part of lot numbered twenty-two (22) in sqr. four hundred and ninety-one, (491.) Contains 3,250 sqr. ft. Consideration, $910. Recorder W. B., No. 116, folio 239.

(Indorsed:) Conveyances of property to William Fischer, from 1832 to 1853, inclusive, excepting "corporation deeds" within those dates, which deeds are so entitled on another paper.

NOTE.—Portions inclosed in brackets [ ] in this exhibit were written in pencil.—PRINTER.

The examination-in-chief of Charles A. James was resumed from page 59, as follows:

Turn to the day-book and ledger of William Fischer, under date of January, 1843, and state whether you find any entries relating to the purchase of real-estate from Stephen P. Franklin, and, if so, give them.

A. Day-book, under date of January 17, 1843, entry as follows:

William Fischer, Dr.

Cash on lots 16 and 17, square 216	$125 00
Under date of January 20, cash paid balance on lots 16 and 17, square 216	375 00

In ledger "C," page 58, I find the following entry:

Cash paid S. P. Frankli. on lots 16 and 17	$125 00
Cash paid S. P. Franklin on lots 16 and 17	375 00

Q. Now turn to the day-book and ledger of April, 1843, and state any entries in relation to the purchase of real-estate from Richard Joyce.

A. In the day-book, under date of April, 1843, I find the following:

43 *William Fischer, Dr.*

To check on Bank of the Metropolis	$552 00
Cash paid R. Joyce on lot	393 00

In ledger "C," folio 58, I find the following:

To cash paid R. Joyce for lot 2, square 223	$845 00

Q. Now, turn to the day-book and ledger of the same month and year, and read any entries relating to the purchase of real estate from W. W. Corcoran, on or about the 21st of April, 1843?

A. In the day-book, under date of 22d of April, 1843, I find the following entry:

William Fischer, Dr.

Corcoran & Riggs	$323 83
In ledger C, folio 58, April 21, cash paid Corcoran & Riggs for one-half of lot No. 7, square 405	323 83

Q. Read any entries in the day-book and ledger of November, 1844, relating to the purchase of property by William Fischer and

Louis Johnson from Henry M. Morfit, on or about the 7th of November, 1844.

A. In the day-book, under date of November 8, 1844, I find the following entries:

Bank of Metropolis, Cr.

By check to H. M. Morfit..... $266 66

William Fischer, Dr.

To Bank of Metropolis for first payment on lots 20 and 21, in square 491..... $266 66

Bills payable, Cr.

By three notes payable at six, twelve, and eighteen months. $1,333 32

William Fischer, Dr.

To bills payable for lots 20 and 21, in square 491..... $1,333 32

44 In ledger "C," page 439, under date of November 7, 1844, I find the following:

To bills payable for half of lots 20 and 21, in square 491.. $1,333 32
To Bank of Metropolis, first payment..... 266 66

Q. Read any entries in the day-book and ledger of April, 1845, relating to the purchase of real estate by Fischer from Provey Gadsby, James Eakin, and Alexander McIntire, executors of John Gadsby, on or about the 28th of April, 1845.

A. In the day-book, under date of April 30, 1845, I find the following entries;

Bank of Metropolis, Cr.

By check to A. McI:..... $408 61

William Fischer, Dr.

To Bank of Metropolis..... $408 61
To bills payable..... 1,225 83

Bills payable, Cr.

By three notes each, from 12th, at 6, 9, and 12 m..... 408 61

In ledger "C," folio 439, I find the following:
Under date of April 30, 1845:

To Bank of Metropolis..... $408 61

And below:

To bills payable April 30, omitted..... ..... 1,225 83

Q. Read any entries in the day-book and ledger relating to the purchase of real estate from John Marbury, trustee, on or about the 19th day of May, 1845.

A. I find nothing under that date.

Q. Turn then to April or May, 1843, and read any entries relating to the purchase of real estate from John Marbury, trustee?

A. Under date of May 26, 1843, I find the following entries:

45 *Bills payable, Cr.*

By note to W. Gunton,			at eight months, for.....	$287 04
By	do.	do.	sixteen mo's, for	298 08
By	do.	do.	twenty-four months.....	309 12

William Fischer, Dr.

To cash payment on lot 10, in subdivision of lot numbered 12, 24 feet front and 123 feet deep.....	$276 00
To bills payable.....	894 24

In ledger "C," folio 375, I find the following under date of May 26, 1843:

Cash on lot No. 10, in subdivision of lot 12, in Georgetown..	$276 00
To bills payable for the same.....	894 24

Q. Now turn to and read any entries in the day-book and ledger, relating to the purchase of property from W. Cranch and W. G. Eliot, and ux., on or about the 11th of June, 1845.

A. In the day-book under date of June 12, 1845, I find the following:

Bank of Washington, Cr.

By check to W. G. Eliot.....	$1,550 00
In ledger "C," folio 440, under date of June 10, 1845, on the line of that date	1,550 00

Q. Do you find any entries in the day-book and ledger relating to the purchase of property by William Fischer from Roger C. Weightman, surviving trustee, and David A. Hall, on or about the 3d day of May, 1845?

A. I have carefully examined the books for the months of April, and May, and June, and find no such entry.

Q. Do you find any entry relating to the purchase of real estate by William Fischer from Margaret Dale and Walter C. Livingston and wife, on or about the 23d of May, 1845?

A. I find no such entry. I have examined for the months of April, and May, and June.

Q. Do you find anything relating to the purchase of real estate by Fischer from Andrew B. McClellan, on or about the 25th of November, 1845?

46 A. In the day-book, under date of December 4, 1845, I find the following entry:

William Fischer, Dr.

To cash paid Dyer for lot No. 4, in square 57..... $29 50

William Fischer, Dr.

In ledger "C," folio 440, I find the following, under date of December 3, 1845:

To cash paid R. Dyer & Co. for lot 4, in square 57..... $29 50

Q. Read any entries you may find relating to the purchase of real estate from Michael Larner, on or about the 7th of May, 1846.

A. In the day-book, under date of May 7, 1846, I find the following:

William Fischer, Dr.

To bills payable.....	$1,000 00
To discount on note.....	10 67
Cash.....	125 00
For east part of lot No. 2, in square 455, N. S. F., 26 feet 7½ inches front, 101 feet 10¼ inches deep; ass't at 25 cents per foot improvement, at.....	750 00

In ledger "C," folio 487, I find the following:

To bills payable.....	$1,000 00
Cash.....	135 67
For east part of lot 2, in square 455, north F, 26 feet 7½ inches front, 101 feet 10¼ inches deep.....	

Q. Read any entries you find in respect to the purchase from Richards Potts and others, on or about the 19th of March, 1847.

A. In the day-book, under date of April 20, 1847, I find the following:

William Fischer, Dr.

Amount paid R. Potts, balance..... $144 50

47 In ledger "C," folio 519, I find the following, under date of April 19, 1847:

R. Potts, on lot 11, square 80..... $144 50

Q. Read any entries you may find relating to any purchase by Fischer and Lewis Johnson, from John F. Callan, on or about the 21st of January, 1848.

A. The day-book for that year is not here. I find on ledger "D," folio 12, the following, under date of April 1, 1848:

By house and lot No. , square 491, cash..... $10,000 00

Q. Now read any entries relating to any purchase from Anderson Rothwell, on or about the 16th of June, 1851.

A. In the day-book, under date of June 18, 1851, I find the following:

William Fischer, Dr.

To cash paid Rothwell for lot $960 00

In ledger "D," folio 155, under date of June, same entry.

Q. Do you find any entry relating to the purchase of property from Sarah Tate, on or about the 28th of October, 1851?

A. I find none.

Adjourned till to-morrow, the 30th inst., at 7.30 p. m.

J. J. JOHNSON,
Exam'r in Chancery.

Met pursuant to above. Present, counsel on either side; and thereupon the examination-in-chief was resumed, as follows:

Q. Read any entries you may find in respect of the purchase of south part of lot No. 22, in square No. 491, from Alexander McIntyre and Henry M. Morfit, on or about the 9th of May, 1845.

A. In William Fischer's day-book, under date of 10th May, 1845, I find the following:

48 *William Fischer, Dr.*

To Bank of Metropolis..... ..... $227 50
For first payment on lot 22, in square 491. To bills payable 713 19

In ledger "C," folio 439, I find, under date of May 10, 1845, the following:

To Bank of Metropolis..... ..... $227 50
To bills payable..... 713 19

Q. Now, I will ask you to turn to the day-book, under date of December 28, 1850, and read any entry you may find in relation to the purchase by Wiliam Fischer, of lots 8, 9, and 22, in square 724, and lots 20 and 21, in square 725.

A. Under that date I find the following entries:

William Fischer, Dr.

To one-fourth payment on lots 8, 9, and 22, in square 724; 20 and 21, in square 725..... .... $159 86½

To James Adams, trustee, Dr.

Three notes for $159.86½, at six, twelve, and eighteen months, with interest..... $478 99½

Bills payable, Cr.

By three notes, to J. A. Adams and T. G., trustees..... $478 99½

Q. Give me an entry in the ledger relating to this subject.

A. In ledger "D," folio 155, I find the following:

December 28th, 1850, one-fourth payment on lots in squares 724 and 725..... $159 86½
Three notes to James Adams, trustee..... $478 99½

Q. He charges himself, then, with that amount.

A. Yes.

Q. In making purchase of real estate and making entries on account thereof in the ledger, as you have detailed in your testimony, how was the account kept in which he made the entries?

49 A. He always charged himself in his individual account with the amount.

Q. Have you examined the land-records of this District to ascertain how lots 8, 9, and 22, in square 724, and lots 20, and 21, in square 725, passed from William Gunton, to whom they were conveyed by William Fischer to James Adams and Thomas Gunton, trustees? If yea, state the result of such examination.

A. I have made the examination, and find in liber W. B., 123, fol. 195, that William Gunton, as trustee, September 1st, 1845, conveyed to Jonathan Eliot, certain lots, among which were the lots in question, and Jonathan Eliot and wife, on the same day conveyed them by deed of trust to James Adams and Thomas Gunton, to secure the deferred payments, being five notes, payable at one, two, three, four, and five years. The first one for $338.13; second, $322.53; third, $366.96; fourth, $291.33; fifth, $275.73; liber 123, fol. 197. James Adams and Thomas Gunton, trustees, under said deed of trust sold at auction, December 24th, 1850, said lots to William Fischer, and that on December 20th, 1856, James Adams, as surviving trustee, conveyed said lots to Mrs. Harriet Fischer; liber J. A. S., 128, fol. 24.

Q. Now look at the day-book, under date of the 23d or 24th of June, and read any entry you may find in relation to the payment of the note first maturing, given by William Fischer to James Adams and Thomas Gunton, trustees.

A. In the day-book, under date of 23d of June, 1851, I find the following:

Bills payable, Dr.

To cash, paid note to B. of A. W..... $164 00

Q. Now look at the day-book, under date of December 18, 1851, and read any entry you find in relation to the payment of the second note?

A. Under that date I find the following entry:

Bills payable, Dr.

To cash paid note..... $159 87

Q. Do you know when the last note was paid, and by whom?

50 A. Yes; the last note was paid by G. J. and Harriet Fischer, executors of William Fischer, on the 26th of June, 1852.

Q. How do you know that?

A. I find that G. J. and Harriet Fischer, executors of William Fischer, opened an account ir the Bank of Washington, on the 20th of February, 1852; on the 26th of June, bills and notes was credited with William Fischer's note, $159.86, principal, and $14 $\frac{48}{100}$ interest, making a total of $174.34, and that on the same day, 26th of June, G. J. and Harriet Fischer, executors of William Fischer, were charged with that sum.

Q. This note, then, was discounted by the Bank of Washington?

A. Yes.

Q. Can you tell me whether the note given by Fischer, for $6,065.84, dated May 3, 1845, had been paid by proceeds of sales, or a sufficient amount had been realized from sales for that purpose on the 28th of December, 1850, and whether any, and what balance of such proceeds remained after deducting said note with interest?

A. The note was paid in full on the 14th of December, 1850, leaving a balance of over $1,200.

Adjourned till Wednesday, 5th April, 1871

J. J. JOHNSON,
Examiner in Chancery.

Met pursuant to above, and by consent adjourned till 10th April, at 7.30 p. m., at the bank.

J. J. JOHNSON, *Examiner.*

Met pursuant to above and adjourned till the 26th inst., at 7.30 p. m., at the same place.

J. J. JOHNSON, *Examiner.*

Met pursuant to above and adjourned till the 28th inst., at the same hour and place.

J. J. JOHNSON, *Examiner.*

51 Met pursuant to above and adjourned till May 2, at the same hour and place.

J. J. JOHNSON, *Examiner.*

Met pursuant to above and adjourned till May 6, at 2 o'clock p. m., at the same place.

J. J. JOHNSON, *Examiner.*

Met pursuant to above and adjourned till Monday, the 8th inst., at 7.30 p. m., at the same place.

J. J. JOHNSON, *Examiner.*

Met pursuant to above. Present, counsel on either side, and thereupon the examination-in-chief of Charles A. James was resumed as follows:

Q. Look at the note now shown you, marked W. G., No. 3, and state in what custody it has been, so far as you know.

A. In custody of the Bank of Washington; there is where I found it; it has been in the safe of the bank, where it keeps officers' bonds and other papers; the safe is very rarely opened.

Q. Has that note been kept in a wrapper in the safe, or without any covering?

A. I found it in a wrapper.

Q. Give me the endorsement; and in whose handwriting?

A. The endorsement on the wrapper is as follows: "Balance of note and interest in full, $992.42, 14th December, 1850;" the endorsement is in the handwriting of Thomas Gunton.

Q. Is James Adams cashier of the bank at this time?

A. He is not.

Q. When did he cease to be cashier?

A. The 1st of July, 1870.

Q. Before that time who attended to the duties of cashier?

A. I did, for some two years.

Q. Will you state the mental condition of Mr. Adams at the present time?

52 A. His mind is very much impaired, and memory enfeebled?

Q. What led to your appointment as assistant cashier?

A. Mr. Adams' enfeebled mental condition.

Q. State his age, if you please.

A. I think 76 years—may be 78 years.

Q. Who are the survivors of the original trustees of the Bank of Washington—I mean those who were trustees in 1855?

A. Dr. William Gunton and Mr. John F. Callan?

Q. What is the age of Dr. Gunton?

A. He is in his 80th year,

Q. State the bodily and mental condition of John F. Callan.

A. His mind very much impaired. He does not attend to his business at all. He is confined to his room, and sometimes to his bed.

Cross-examined:

Q. Do you know the handwriting of James Adams?

A. I do, perfectly.

Q. In whose handwriting is the endorsement on Exhibit W. G., No. 3, as follows: Interest received, $728.54, up to the 30th June, 1847. J. A., cashier?

A. In the handwriting of James Adams.

Q. What do you understand that endorsement to mean? By whom does it mean that the interest was paid?

A. The interest was paid by William Gunton, trustee.

Q. Why does it mean that he paid it rather than the drawer paid it?

A. In the ordinary course of business it would not mean that, but I know the fact Dr. Gunton paid it. I have seen his check.

Q. Can you give me any explanation why interest was paid on it at all?

A. I cannot, because I don't know.

Q. Do you know whether any other interest was paid on it, other than that amount?

A. There was.

Q. Does that appear from the books of the bank?

A. It does.

Q. What other payments of interest, according to the books of the bank, appear to have been made on this note?

53 A. The books show on November 5, 1847, $8.67; June 30, 1849, $258.57; December 31, 1849, $43.47; December 14, 1850, $53.84.

Q. How does it appear, according to the books of the bank, that the payment mentioned on the back of the note was made?

A. It was credited to interest account, and William Gunton's trustee's account was charged with that amount, and his check for that amount was filed with the note and other papers in the iron safe.

Q. In whose handwriting is the memorandum in pencil on the face of the note indicating the amount of the interest?

A. In the handwriting of Dr. Gunton. The memorandum referred to is in these words: "Int. to 1st of July, 1847, 2 years and 58 day', $728.54."

Q. In whose handwriting is the face of the note?

A. I think in Mr. William Fischer's.

Q. In whose handwriting is the red-ink indorsement?

A. In the handwriting of Mr. Boarman, the book-keeper of the Bank of Washington.

Q. In whom, in May, 1845, was vested the authority of discounting notes in the Bank of Washington?

A. I do not know. I came here in 1852, and at that time, and since, the board of trustees, the president, and occasionally the cashier.

Q. Is there any minute-book of the board of trustees showing the discount of this note?

A. There is not—neither of this note or any other note.

Q. Referring to the books of William Fischer, about which you have been examined, what system were there kept—double or single entry?

A. Single-entry.

Q. Is that the usual mode in which merchants keep their books?

A. Some do, and some do not.

Q. Does this bank keep its books by single or double entry?

A. They are kept in double-entry.

Q. Do you consider the system of single-entry as certain and safe as double-entry?

A. I can't answer that.

C. A. JAMES.

54 Sworn to and subscribed before me, this 8th day of May, 1871.

J. J. JOHNSON,
Exam'r in Chancery.

The following papers were called for by the complainants during the examination of Dr. William Gunton, and are herewith filed, and marked Exhibits Nos. 4, 5, 6, and 7.

J. J. JOHNSON, *Examiner.*

EXHIBIT No. 1.—W. G.

[This is the original of Exhibit W. G., No. 2, p. 20.]

Whereas, by a certain indenture bearing date the fourteenth day of May now last past, and made between William Fischer and Harriet his wife, of the first part, and William Gunton of the second part, certain squares and lots of ground lying in the city of Washington, and particularly specified in the said deed, were conveyed unto the said William Gunton upon trust, to sell the same at public or private sale, and to apply the proceeds thereof to the payment of a certain note therein described, and discounted by the trustees of the Bank of Washington;

And whereas it was by the said indenture further provided that any surplus of moneys which might remain after the payment of the said note should be applied by the said William Gunton, in such manner as the said William Fischer should, by any instrument of writing, under his hand and seal, direct: Now, therefore, the said William Fischer doth hereby require and direct the said William Gunton to pay over all moneys which shall remain of the proceeds of the sales of the said squares and lots, after full payment of the note mentioned in the said deed, and after deducting a commission at the rate of ten per centum on the whole amount of such sales as a compensation for his services as trustee in disposing of the said property to the trustees of the Bank of Washington; and for his so doing this shall be his authority.

In witness whereof the said William Fischer hath hereunto set his hand and seal this thirteenth day of December, in the year one thousand eight hundred and forty-five.

W'M FISCHER. [SEAL.]

Witness:
T. GUNTON.
THOMAS J. BURR.

55 EXHIBIT No. 3.—W. G.

$6,065.84.] WASHINGTON, *May* 3, 1845.

Sixty days after date I promise to pay to my own order six thousand and sixty-five dollars and eighty-four cents for value received, with interest from 1st May, 1845, at the Bank of Washington.

W'M FISCHER.

Int. to 1st July, 1847, 2 years and 58 days, $728.54.

(Endorsement:) 3,023. W. Fischer. $6,065.84. Int. at 6 per cent., $63.70. 2–5 July, '45.

W'M FISCHER.

Pay Ja's Adams, cashier, or order, without recourse to R. C. Weightman, surv'g trustee of D. Carroll, of Duddington.

Int. rec'd, $728.54, up to the 30th June, 1847. J. A. C.

EXHIBIT No. 6.

Total amount of sales	$46,376 39
Total am't of disbursements, including payment of note, taxes, &c., &c	25,728 60

MAY 12, 1871.

EXHIBIT No. 7.

Square 635, lots 7, 13, 20, 21.
Square 636, lots 3, 6, 10, 16, 17, 18.
Square 638, lots 4, 5, 7.
Square E. 643, lot 1.
Square 647, all.
Square 687, lots 5, 14.
Square 693, lot 5.
Square 694, lot 6.
Square 700, lots 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31.
Square 743, lots 17, 20, sold for taxes.
Square 743, lots 23, 24.
Square 753, lots 1, 2, 3, 20, 21, 22, 23, 24.
Square 759, lots 12, 13.
Square 780, lots 4, 5, 6, 7.

56 EXHIBIT No. 4.

Daniel Carroll, of Duddington, in account with the Bank of Washington, as per auditor's report.

			Interest due.	Principal due
1843.				
Nov. 25	To balance of judgment of $20,000, per account rendered			$5,466 88
	To interest due to same date, per account rendered	2,551 33		
	To interest from 25th Nov., 1843, to 1st May, 1845, 1 year, 5 months, 5 days	469 24		
			3,020 57	
	To judgment for			12,660 00
	To interest to 25th Nov., 1845, per account rendered	$5,363 62		
	To interest from 25th Nov., 1843, to 1st May, 1845, 1 year, 5 months, 5 days	1,086 65		
		6,450 27		
1845.				
May 3	By cash of R. C. Weightman, surviving trustee, viz:			
	For Orme's note, $10.45, and interest, $1.36 $11 81			
	For William Fischer's note for lots sold James Greenleaf, (int. from 1st May) 6,065 84			
	For James Greenleaf, (int. from 1st May) 66 85			
		6,144 50		
			305 77	
	To judgment for			7,560 00
	To interest to 25th Nov., 1843, per account rendered	7,249 27		
	To interest from 25th Nov., 1843, to 1st May, 1845, 1 year, 5 months, 5 days	648 90		
		$7,898 17		
1844.				
July 1	By cash of R. C. Weightman, surviving trustee, viz:			
	Per D. A. Hall, adm'r of James Greenleaf $142 14			
	Per Ed. Simms' note, $105.31, and int., $56.86 162 17			
	Per J. W. Beck 32 00			
	B. E. Green 1,943 15			
	Geo. Sweeny 247 33			
	W. P. Elliot 153 63			
	Walter Lenox 120 00			
	Parker, for J. W. Beck 42 04			
	James Adams 721 33			
	D. A. Hall 1,418 87			
	W. W. Stewart's two notes 114 89			
	W. Jones' note 562 18			
	By amount heretofore charged for commissions allowed on sale of land in Maryland, now credited and claim waived 417 82			
	Balance yet unaccounted for by the sheriff of Baltimore County on the land sold by him, now credited and claim waived 247 31			
		6,324 86	1,573 31	
	To judgment for			1,870 00
	To interest to 25th Nov., 1843, per account rendered	1,433 11		
	To interest from 25th Nov., 1843, to May 1st, 1845, 1 year, 5 months, 5 days	160 51		
			1,593 62	
	To judgments on three notes of $3,033 33⅓ each, as endorser of W'm Tho. Carroll, per account rendered			9,100 00
	To interest to 25th Nov., 1843, per account rendered	9,306 27		
	To interest from 25th Nov., 1843, to 1st May, 1845, 1 year, 5 months, 5 days	781 08		
			10,087 35	
	To judgment on bond assigned to the bank by the executrix of Charles Carroll of Carrollton, per account rendered 25th Nov., 1843			5,621 44
	To interest to 25th Nov., 1843, per account rendered	3,716 38		
	To interest from 25th Nov., 1843, to 1st May, 1845, 1 year, 5 months, 5 days	482 50		
	Costs in Dis. Col., per account rendered	37 40		
			4,236 28	
			$20,816 90	$42,278 32
	Total interest to 1st May			20,816 90
	Total, principal and interest, to May, 1845			$63,005 22

57

EXHIBIT No. 5.

Bank of Washington in account with W'm Fischer.

DR.				CR.			
1845.				1845.			
Jan 6	To deposit		$53 15	Jan. 7	By cash		$303 15
10	do.		83 62	18	do.		150 00
11	disc't	1,703	250 00	March 11	do.		252 63
11	div'd	58	71 40	31	Balance		5 02
Mc'h 11	deposit		52 63				
15	disc't	2,295	200 00				
			$710 80				$710 80
1845.				1845.			
April 1	To balance		$5 02	May 13	By cash		$202 10
May 13	deposit		52 50	June 13	do.		1,550 00
15	disc't	3,100	150 00	14	do.		224 94
June 14	do.	3,479	1,800 00	30	Balance		30 48
			$2,007 52				2,007 52
58 1845.				1845.			
July 1	To balance		$30 48	July 5	By cash		$71 40
5	div'd	59	71 40	Aug. 12	do.		1,818 90
Aug. 12	deposit		320 00	Oct. 16	do.		1,515 75
16	disc't	4,036	1,500 00	Dec. 17	do.		1,010 50
Oct. 15	deposit		515 75	31	Balance		31 58
18	disc't	4,628	1,000 00				
Dec. 17	deposit		110 50				
20	disc't	5,290	900 00				
			$4,448 13				$4,448 13
1846.				1846.			
Jan. 1	To balance		$31 58	Jan. 8	By cash		$80 40
12	div'd	60	80 40	Feb. 17	do.		909 45
Feb. 13	deposit		209 45		Balance		31 58
14	disc't	5,818	700 00				
			$1,021 43				$1,021 43
1846.				1846.			
April 1	To balance		$31 58	April 21	By cash		$707 35
20	deposit		157 33	May 6	do.		989 50
25	disc't	6,476	544 22	June 23	do.		550 00
May 9	disc't	6,661	989 50				
June 23	deposit		23 67				
27	disc't	453	494 75				
30	balance		5 80				
			$2,246 85				$2,246 82
59 1846.				1846.			
July 8	To deposit		$55 80	July 1	By balance		$5 80
11	disc't	541	950 00	8	cash		1,000 00
8	div'd		80 40	23	do.		80 40
Aug. 17	deposit		50 00	Aug. 25	do.		500 00
22	disc't	907	450 00	Sept. 8	do.		959 98
Sept. 8	deposit		159 98				
12	disc't	1,047	800 00				
			$2,546 18				$2,546 18
1846.				1846.			
Oct. 28	To deposit		$54 73	Oct. 28	By cash		$454 73
31	disc't	1,410	400 00	Nov. 10	do.		808 40
Nov. 10	deposit		8 40				
14	disc't	1,462	800 00				
			$1,263 13				$1,263 13
1846.				1846.			
Dec. 31	To deposit		$4 20	Dec. 31	By cash		$404 20
31	disc't	1,750	400 00				
			$404 20				$404 20
60 1847.				1847.			
Jan. 12	To deposit		$58 40	Jan. 12	By cash		$808 40
16	disc't	1,815	750 00	Feb. 5	do.		1,276 09
19	deposit		642 37	March 5	do.		404 20
23	deposit		595 48	16	do.		757 88
M'ch 5	deposit		54 20	May 13	do.		353 68

EXHIBIT No. 5.—Continued.

Bank of Washington in account with W'm Fischer.

DR.				CR.			
	6	depo. (disc't).....2,099	350 00		18	do.	707 35
	16	deposit	57 88				
	20	disc't 2,177	700 00				
May	12	deposit	53 68				
	15	disc't 2,509	300 00				
	17	deposit	57 35				
	22	deposit	38 24				
	22	disc't 2,546	650 00				
			$4,307 60				$4,307 60
1847.				1847.			
July	8	To disc't 2,858	$250 00	July	8	By cash.....	$303 15
	7	div'd 63	80 40		20	do.	656 83
	19	deposit	37 98	Aug.	16	do.	200 00
	24	disc't 2,960	600 00		21	Bal. and checks surrendered	1,108 40
Aug.	17	deposit	1,300 00				
			$2,268 38				$2,268 38
61 1847.				1847.			
Aug.	22	To bal. from settlem't.....	1,108 40	Sept.	2	By cash.....	$550 00
Sept.	11	disc't 3,274	200 00		9	do.	100 00
	25	disc't 3,364	550 00		10	do.	252 63
					11	do.	200 00
					21	do.	606 30
					25	do.	83 00
					30	By balance.....	66 47
			$1,858 40				1,858 40
1847.				1847.			
Oct.	1	To balance	$66 47	Oct.	6	By cash.....	$65 00
Nov.	11	deposit.....	52 10	Nov.	11	do.	202 10
	13	disc't 3,714	150 00		23	do.	555 78
	23	deposit.....	55 78	Dec.	31	Balance	1 47
	27	disc't 3,785	500 00				
			$824 35				$824 35
1848.				1848.			
Jan.	1	To balance	$1 47	Jan.	14	By cash.....	$151 58
	13	deposit	51 58		24	do.	1,000 00
	17	deposit	1,006 07		25	do.	505 25
	15	disc't 4,130	100 00	March	16	do.	101 00
	21	deposit, y'r bill.....	27 61		18	do.	300 05
62	24	deposit.....	20 10		29	do.	589 73
	31	disc't 4,193	450 00				
M'ch	15	deposit	1 05				
	18	do.	336 06				
	18	disc't 4,506	100 00				
	28	deposit	4 73				
	31	disc't 4,590	450 00				
	31	balance	68 94				
			$2,617 61			Checks surrendered...	$2,617 61
1848.				1848.			
April	3	To Nussbaum.....	$4,000 00	April	1	By cash.....	$68 94
	18	Oakley	33 00		3	do.	300 00
	26	Fischer.....	35 00		4	do.	415 75
May	18	Gunton.....	1,000 00		6	do.	476 63
June	4	disc't 5,162	450 00		6	do.	470 00
	21	balance.....	126 56		10	do.	700 00
					13	do.	1,000 00
					14	do.	115 12
					19	do.	275 21
					25	do.	90 00
					26	do.	150 00
				May	13	do.	130 75
					18	do.	101 05
					20	do.	471 38
					26	do.	150 00
					27	do.	100 00
					30	do.	454 73
				June	5	do.	100 00
					10	do.	75 00
			$5,644 56			Checks surrendered...	$5,644 56

EXHIBIT No. 5.—Continued.

Bank of Washington in account with W'm Fischer.

DR.				CR.			
63 1848.				1848.			
July	31	To deposit	$4 73	June	21	By bal. from settlem't	$126 56
Aug.	5	disc't.....5,543	450 00	Aug.	1	By cash	454 73
	21	deposit	126 56	Oct.	3	do	454 73
Oct.	3	deposit	4 73	Dec.	5	do	454 73
	7	disc't.....5,969	450 00		7	do	176 56
Dec.	9	disc't.....6,407	2,000 00		9	do	500 00
					11	do	868 71
			$3,036 02				$3,036 02
1849.				1849.			
Feb.	5	To deposit	$21 00	Feb.	8	By cash	$2,021 00
	10	disc't.....6,842	2,000 00	April	10	do	2,021 00
April	10	deposit	21 00	May	9	do	52 87
	14	disc't.....323	2,000 00		19	do	570 25
May	12	disc't.....538	670 25	June	8	do	200 00
	12	disc't.....539	52 87		13	do	203 00
	17	deposit, Swann	15 00		13	do	2,021 00
	19	disc't.....624	209 05		30	do	212 42
	19	disc't.....625	204 04		30	Balance	117 81
June	13	deposit	21 00				
	16	disc't.....827	2,000 00				
	30	deposit	205 14				
			$7,419 35				$7,419 35
64 1849.				1849.			
July	1	To balance	$117 81	July	10	By cash	$100 00
	3	deposit	45 26		7	do	17 00
	23	deposit, Maguire	30 90	Aug.	15	do	2,021 00
Aug.	15	deposit	21 00	Oct.	17	do	2,021 00
	18	disc't.....1,347	2,000 00	Nov.	27	do	376 41
Oct.	16	deposit	21 00	Dec.	19	do	2,021 00
	22	disc't.....1,830	2,000 00				
Dec.	1	disc't.....2,105	299 44				
	15	disc't.....2,196	2,000 00				
	17	deposit	21 00				
			$6,556 41				$6,556 41
1850.				1850.			
Feb.	18	To cash	$321 00	Feb.	20	By cash	$2,021 00
	23	disc't.....2,682	1,700 00	April	24	do	1,717 85
April	23	deposit	117 85	May	20	do	187 50
	27	disc't.....3,239	1,600 00	June	26	do	1,616 00
May	17	deposit, Barnard	187 50				
	29	deposit, Swann	25 00				
June	25	do	191 80				
	25	disc't.....3,772	1,400 00				
			$5,543 15				$5,544 15
65 1850.				1850.			
Aug.	27	To deposit	$114 70	Aug.	28	By cash	$1,414 70
	31	disc't.....4,334	1,300 00	Sept.	3	do	1 75
	31	balance	1 75				
			$1,416 45				$1,416 45
1850.				1850.			
Oct.	16	To depo., G. & Seaton	$231 33	Oct.	1	By balance	$1 75
	29	deposit, Swann	20 00		30	By cash	1,313 65
Nov.	2	disc't.....4,886	1,100 00		30	Balance	247 48
Dec.	30	deposit	211 55				
			$1,562 88				$1,562 88
1851.				1851.			
Jan.	1	To balance	$247 48	Jan.	2	By cash	$1,111 55
	4	disc't.....5,491	900 00	March	5	do	909 45
M'ch	1	disc't.....6,039	700 00		11	do	193 15
	2	deposit	209 45	May	12	do	707 35
	15	disc't.....6,109	193 15	June	4	do	230 00
May	12	deposit	107 35		24	do	36 55
	17	disc't.....6,776	600 00				
	23	deposit	230 62				
			$3,188 05				$3,188 05

EXHIBIT No. 5.—Continued.

Bank of Washingtan in account with W'm Fischer.

DR.			CR.		
66 1851.			1851.		
July 12	To deposit, Gardner	$12 66	Aug. 2	By cash	$606 30
31	deposit, Fischer	500 00	23	do	500 00
Aug. 14	deposit, Gardner	50 27	Sept. 1	do	123 11
23	disc't .42	600 00	10	do	87 00
30	deposit	139 30	12	do	72 95
30	disc't .74	175 13	30	Balance	90 75
Sept. 24	depo., ch'k book	2 75			
		$1,480 11			$1,480 11
1851.			1851.		
Oct. 1	To balance	$90 75	Oct. 27	By cash	$606 30
25	disc't .672	500 00	Dec. 18	do	863 34
27	deposit	106 30			
Nov. 4	deposit, book	1 50			
8	deposit, book	75			
Dec. 19	disc't .1,130	400 00			
19	disc't .1	302 74			
19	disc't .2	67 60			
		$1,469 64			$1,469 64
67 1851.			1851.		
Dec. 30	To deposit, checks	$0 50	Nov. 26	By cash	$2 25
1852.					
Jan. 6	deposit, 2 books	1 00			
17	deposit, do	75			
		$2 25			$2 25

68 *Exhibit A to bill of complaint*, (See page .)

WILLIAM FISCHER'S WILL.

The last will and testament of me, William Fischer, of the city of Washington, in the District of Columbia.

I nominate, constitute, and appoint Harriet, my wife, and my brother, George I. Fischer, executrix and executor of this my last will. I give and devise unto my mother, Elizabeth Fischer, for her life, the two-story brick dwelling-house, situate in Fredericktown, in the State of Maryland, on lot No. 275, with the ground and appurtenances thereunto belonging, [and the vacant lot of ground lying on the west side of and adjoining to the same premises,] (sold and again purchased with the improvements thereupon after the date of the will.) And from and after her decease, I hereby authorize, empower, and direct my said executrix and executor, and the survivor of them, and the executors and administrators of such survivor to sell and dispose of and convey the said premises with their appurtenances, together or in parcels, and by public or private sale or sales, for the best price or prices that can be reasonably obtained for the same, and to receive the rents thereof from her death until the same shall be sold; and I give and bequeath the money to arise from such sale and from the receipts of the rents and profits of the said premises from my said mother's death unto my four sisters, Miranda Shipman, Margaret Gombore, Ann Eliza Cauliflower, and Sarah Bevan, to be equally divided between them, share and share alike, and to be paid to them as soon as conveniently can be after my said mother's death. And in case any of my sisters shall die in the life-time of my said mother, leaving any child or children surviving her, then I give and bequeath to such child or children, the part or share of such sister so dying, to

be equally divided between them, if more than one, and the remaining third part thereof unto my nephew, George Neall, his heirs and assigns forever.

[I give and devise my large three-story brick dwelling-house and store, fronting on Patrick street, in Fredericktown aforesaid, with the ground and appurtenances thereto belonging,] (sold before his death;)
69 also my three-story brick dwelling, fronting on Bridge street, in Georgetown, in the District of Columbia aforesaid, with the ground and appurtenances thereto belonging, and the several pieces or parcels of ground belonging to me, lying in the said city of Washington, and distinguished on the plan thereof as [lot numbered twenty-two, in square four hundred and ninety-one, (sold before his death;) lot number two, in square two hundred and twenty-three; lots numbers sixteen and seventeen, in square number two hundred and sixteen; lot number seven, in square number four hundred and five; and lot number two, in square fifty-nine, with the buildings, improvements, and appurtenances to the same, and every or any of them belonging, unto George I. Fischer and Robert S. Patterson, their heirs and assigns, upon trust nevertheless, and to and for the uses, intents, and purposes hereinafter expressed or declared of or concerning the same; that is to say, upon trust that they, the said George I. Fischer and Robert S. Patterson, or the survivor of them, or the heirs of such survivor, shall and do, from time to time, during the minority of my grandson, William Fischer Zantzinger, expend and apply the clear residue of the rents and profits of the said building and premises situate and being in Georgetown aforesaid, after payment of the taxes due in respect thereof, and the necessary expenses of keeping the same in proper repair and condition or so much of such residue as they the said trustees or the survivor of them or his heirs shall, in their or his discretion, think fit, in the maintenance, education, and bringing up, or for the benefit of my said grandson, until he shall attain the age of twenty-one years or sooner depart this life. And upon trust, they, the said George I. Fischer and Robert S. Patterson or the survivor of them, or the heirs of such survivor, shall and do stand and be seized of and interested in all the remainder of my said real estate, devised to them as aforesaid, and also in the said building, ground, and premises situate and being in Georgetown aforesaid, so soon as my said grandson shall have attained the age of twenty-one years or previously departed this life, in trust for my daughter, Harriet Ann, the wife of the said William C. Zantzinger, during her life, and do and shall pay to, or permit and suffer or otherwise authorize and empower her to receive and take the rents and profits of the said premises
70 respectively, or so much thereof as shall remain after paying the taxes due and to grow due for, and the charges and expenses of keeping the same premises in good and tenantable repair and condition, to and for her own sole and separate use and benefit, notwithstanding her present or any future coverture, and the same not to be subject to the control, disposition, debts, or engagements of the said William C. Zantzinger, or any future husband of her, my said daughter, whose receipts alone, as well whilst she shall be married as whilst she shall be sole, shall be sufficient discharges for the same. And from and immediately after the death of my said daughter, then upon further trust, that they, the said George I. Fischer and Rob't S. Patterson, and the survivor of them, and the heirs of such survivor, shall and do thenceforth, from time to time, during the respective minorities of all and every the child and children of my said daughter, other than the said William Fischer Zantzinger, who shall be living at her death, pay and

apply the rents, issues, and profits of the said premises for and towards their respective maintenance and education, use and benefit, in equal proportions, share and share alike, if more than one, and if but one, then for and towards the maintenance, education, use and benefit of such only child. And from and immediately after all and every the child and children of my said daughter shall have attained their respective ages of twenty-one years, then in trust, that they, the said George I. Fischer and Robert S. Patterson, and the survivor of them and the heirs of such survivor shall, and do thereupon sell and dispose of and convey all the said trust premises, with their appurtenances, together or in parcels, and by public or private sale or sales, for the best price or prices that can be reasonably obtained for the same, and pay and apply the money arising from such sale or sales equally to and amongst all and every the child and children of my said daughter, share and share alike, if more than one, and if but one, then the whole thereof to such one child, for his, her, and their respective use and benefit, and his, her, and their own proper monies absolutely.

And in case it shall happen that any of the children of my said daughter shall happen to die before having attained his, her, or their respective age or ages as aforesaid, then my will is that the part or
71 share, parts or shares, of such child or children so dying, as well in respect of the rents, issues, and profits of the said trust estate so payable during the minority of her said child or children, as of the mon*ies* arising by sale thereof afterwards, shall be equally divided, and go and be paid to and amongst the survivors of them, (if more than one,) share and share alike, when and as their original shares, respectively, shall become due and payable as aforesaid, and if but one, then the same to be paid to such only child, at the time aforesaid. But if my said daughter shall have no child or children living at her decease, or if leaving any such, all and every of them shall die before they or any of them shall have attained their respective ages of twenty-one years, and become entitled to the mon*ies* arising from the sale of the said trust estate, then and when such event shall happen, upon this further trust for, and I do hereby give and devise all the said trust estate to, my four sisters heretofore named, share and share alike, or their heirs and assigns forever, and do hereby direct my said trustees and the survivor of them, and the heirs of such survivor, to release and convey the same unto and to the use of the said Miranda Shipman, Margaret Gomboro, Ann Eliza Cauliflower, and Sarah Bevan, their heirs and assigns forever.

I give and bequeath unto my grandson, William Fischer Zantzinger, my gold watch and breastpin. [I give and bequeath all those pieces of parcels of ground lying in the said city of Washington, distinguised on the plan thereof as lot number twenty-eight, (west half, in reservation number ten, fronting twenty-seven and a half feet on C street; lot number six, in square number one hundred seventy-two; lot number ten, in square number seven hundred and fifty-six; lot number five, in square number six hundred and sixty-two; lot number three, in square number six hundred and sixty-four, and lot number four, in square fifty-seven; also my moiety of two other pieces of ground lying in the said city of Washington, and numbered on the plan thereof as lots number twenty and twenty-one, in square number four hundred and ninety-one, (and all other my real estate not hereinbefore particularly otherwise disposed of, wheresoever the same may be situate, lying, and being, with their respective rights, privileges, appurtenances) unto my said wife, her heirs, and assigns forever.] And I also give and bequeath to her all the bank and
72 corporation stock of which I may die possessed of or entitled to,

my servant man, Edward Saunders, and all my stock in trade, household furniture and other effects and personal estate of whatsoever nature, to and for her own use and benefit, she paying thereout all my just debts, funeral, and testamentary expenses. In witness whereof I, the said William Fischer, have hereunto set my hand and seal the twenty-fifth of March, in the year of our Lord one thousand eight hundred and forty-six.

W'M FISCHER. [SEAL.]

Signed, sealed, published, and declared by William Fischer, the testator, as and for his last will and testament, in the presence of us, who, in his presence, at his request, and in the presence of each other, have subscribed our names as witnesses hereto.

D. W. MIDDLETON. [SEAL.]
ALPHONSO LABBÉ. [SEAL.]
C. H. W. MEEHAN. [SEAL.]

The black lines commencing at the fifteenth line and continued to the bottom of the second page and including the first four lines of the next page, were drawn by me.

W'M FISCHER.

Nov. 4th, 1848.

DISTRICT OF COLUMBIA, *Washington County, to wit:*

ORPHANS' COURT, *February* 17, 1852.

This day appeared Daniel W. Middleton and Charles H. W. Meehan, two of the subscribing witnesses to the aforegoing last will and testament of William Fischer, late of Washington County aforesaid, deceased, and severally made oath on the Holy Evangels of Almighty God, that they did see the testator therein named, sign and seal this will; that he published, pronounced, and declared the same to be his last will and testament; that at the time of so doing he was, to the best of their apprehensions, of sound and disposing mind, memory, and understanding, and that they, together with Alphonso Labbé the other subscribing witness, respectively subscribed their names as wit-
73 nesses to this will in the presence and at the request of the testator, and in the presence of each other.

Test: E'D N. ROACH,
Register of Wills.

DISTRICT OF COLUMBIA, *Washington County, to wit:*

ORPHANS' COURT, *February* 18, 1852.

This day appeared William J. McCormick, and made oath on the Holy Evangels of Almighty God, that he is well acquainted with the handwriting and signature of William Fischer, having often seen him write his name; that he verily believes the signature "William Fischer," to the foregoing instrument of writing, to be in the proper handwriting of said William Fischer, deceased; also that the whole of the said writing to be in his proper handwriting.

Test: E'D N. ROACH,
Register of Wills.

DISTRICT OF COLUMBIA, *Washington County, to wit:*

I certify that the aforegoing is a true copy from the original filed and recorded in the office of the register of wills for Washington County aforesaid.

Witness my hand and seal of office, this 14th day of April, in the year 1852.

E'D N. ROACH,
Register of Wills.

74 *Order certifying cause to general term to be heard in first instance.—Filed June 27, 1871.*

ZANTZINGER ET AL. *vs.* GUNTON ET AL. } 1955. Equity docket 10.

By consent and agreement of counsel it is, on this 27th day of June, A. D. 1871, ordered by this court that the above-entitled cause be and the same is hereby certified to the court in general term to be there heard in the first instance.

By the court:

MACARTHUR, *Justice.*

Proceedings before the Supreme Court of the District of Columbia, in general term, commencing Monday, September 25, 1871.

MONDAY, *September 25th*, 1871.

By order of the justices present, to wit, Chief Justice Cartter, and Justices Olin, Wylie, and MacArthur, the marshal proclaims the opening of the court.

75 SATURDAY, *December* 2, 1871.

Session resumed pursuant to adjournment. Present, Chief Justice Cartter, and Justices Olin, Wylie, Humphreys, and MacArthur.

WILLIAM C. ZANTZINGER & WIFE; HARRIET ANN, WILLIAM F., JAMES H., FANNIE B., AND DANIEL W. ZANTINGER, compl'ts, *vs.* WILLIAM GUNTON, TRUSTEE, &C., DEF'T. } No. 1955. Equity docket 10.

This cause came on to be heard at this term, and was argued by counsel; and thereupon, upon consideration thereof, it is ordered, adjudged, and decreed that the bill of complaint be, and the same is hereby, dismissed with costs.

And from this decree the complainants, by their solicitor, Mr. Merrick, here now in open court, pray an appeal to the Supreme Court of the United States, and the same is allowed.

76 DISTRICT OF COLUMBIA, *to wit:*

I, R. J. Meigs, clerk of the supreme court of the District of Columbia, do hereby certify that originals of which the foregoing printing and writings are true and complete copies are on file and of record in the clerk's office of said court, and that said originals together constitute the record of the proceedings of said court in a certain cause therein depending and lately decided, entitled William C. Zantzinger et. al., compl'ts, vs. William Gunton, trustee, &c., def't. No. 1955. Equity dock. 10.

In testimony whereof I hereto subscribe my name and affix the seal of said court this 2d day of January, 1872.

[SEAL.] R. J. MEIGS, *Clerk.*

77 In the supreme court of the District of Columbia.

ZANTZINGER & OTHERS
v.
GUNTON & AL.
} Equity No.

It is agreed that the following papers not noted in the record as having been filed in this cause are in evidence therein, viz: Proceedings of the stockholders of the bank of Washington; deed from Bank of Washington to Adams, trustee; Gunton's receipts and expenditures of the proceeds of sales.

FRANCIS MILLER,
For Complainant.
JNO. D. McPHERSON,
For Def't.

78 *Receipts and disbursements by W'm Gunton, trustee.*

Date.				Receipts in excess of disbursements.	Disbursements in excess of receipts.
1845	From sales		1,187 54		
	Paid taxes	394 52			
	" expenses	45 81			
	" com's	118 75			
			559 08		
				628 46	
1846	From sales		1 591 72		
	Paid taxes	123 75			
	" expenses	80 95			
	" com's	159 17			
			363 87		
				1,227 85	
1847	From sales		2,755 35		
	Paid taxes	90 28			
	" expenses	14 25			
	" com's	275 53			
	" interest	728 54			
	" Fisher's note, in part	3,833 01			
			4,941 71	.....	2,186 36
1848	From sales		1,228 30		
	Paid taxes	72 22			
	" com's	122 83			
			195 05		
				1,033 25	
1849	From sales		1,078 49		
	Paid taxes	123 97			
	" expenses	50			
	" Fisher's note, in p't	2,333 50			
	" com's	107 84			
			2,565 81	.....	1,487 32
1850	From sales		2,352 69		
	Paid taxes	131 00			
	" Fisher's note, bal	992 42			
	" com's	235 26			
			1,258 68		
				994 01	
1851	From sales		325 00		
	Paid taxes	61 26			
	" com's	32 50			
			93 76		
				231 24	
1852	From sales		2,507 67		
	Paid taxes	61 26			
	" expenses	110 50			
	" com's	250 76			
			422 52		
				2,085 15	
				6,199 96	3,673 68

79 The president & directors of the Bank of Washington to James Adams. Deed. Recorded 21st October, 1844.

This indenture, made and executed the third day of July, in the year of our Lord one thousand eight hundred and forty-four, by and between the president and directors of the Bank of Washington, of the first part, and James Adams, of the City of Washington, of the second part, witnesseth: Whereas the said president and directors, by virtue of power and authority reposed in them by the act of incorporation, did, by public advertisement, call a general meeting of the stockholders of the said Bank of Washington, by their order to that effect, bearing date the sixteenth day of May, 1844; and whereas, at such meeting, held in pursuance of said call, the following proceedings:

"At a general meeting of the stockholders of the Bank of Washington, convened according to law by an order of the board of directors, in conformity with a notice to that effect bearing date the 16th day of May, 1844, and held at the banking-house on this Saturday the 29th day of June, 1844, for the purpose of deciding on the the course proper to be pursued in view of the expiration of the present charter, and to consider the provisions of any law of Congress which may be passed in relation to the rechartering thereof, C. C. Hyatt, esq., of Maryland, was appointed chairman, and Walter Lenox, esq., of the city of Washington, secretary. The following preamble and resolutions were submitted to the stockholders for their approbation, viz:

80 "The meeting having taken into consideration the present situation of the bank; that its charter will expire on the fourth day of July of the present year; that Congress has adjourned without granting any extension of said charter or making any adequate provision for this state of affairs, thus leaving us to make such arrangements and to adopt measures as our own sense of justice and of duty may demand, without violating or conflicting with what may reasonably be presumed to be the object and purpose of Congress;

"Be it therefore resolved, That it has become a matter of imperative necessity as the only means of providing *as the only means of providing* against the evil consequences which must result from the termination of our charter under existing circumstances, that the entire property and assets of the bank should be assigned over and conveyed trustees.

"2d. That in said deeds of trust, as it is our first duty, so it shall be our first object, to provide for the full and entire security of each and every party who has confided in the honor and integrity of this institution by depositing his money or property in our custody, for the prompt and full payment of our circulation, and for the just and prompt adjustment and liquidation of all other lawful claims and demands of other parties growing out of any business transactions with this bank.

"3rd. To invest the said trustees with ample powers so to em-
81 ploy the means and property now held by the bank, or which may hereafter come to the hands of said trustees, as will best promote the interest of the stockholders, those with whom they have had or may hereafter have business transactions, and of the community in which we reside.

"4th. That to carry out these general views the president and directors of the Bank of Washington be and they are hereby instructed and empowered to cause to be prepared and executed such deed or deeds as may in their judgment be best adapted to secure the above-enumerated objects, and after providing in a full and satisfactory manner for the

faithful fulfillment of all the obligations of the bank, either in law or equity, to manage and conduct the affairs and property in their hands as will the most nearly correspond with the present and past business of the institution; to employ and such officers, agents, and parties as they may deem it expedient or proper to employ; to make such arrangements and contracts, and upon such terms and conditions as they shall deem expedient and proper; and, in general, have, possess, and exercise all such power, authority, and discretion as are now possessed and may be exercised by the president and directors.

"5th. That when the said trustees shall be appointed as aforesaid, the cashier be and he is hereby directed and empowered to assign, transfer, and endorse to them all notes, bills, and other evidences of debt and demand, and all other personal property, cash-books, &c., belonging to, held by, or in possession of the bank which may require to be thus transferred and passed.

82 "6th. That the said deed or deeds of trust shall further provide for periodical and occasional meeting of the stockholders; for the periodical election of trustees; for the regular reports of the business transactions, situation, and affairs of the trusts to the parties interested; and for the faithful performance of all the duties and trusts which may be imposed and created for securing the fidelity of all officers, clerks, and agents who may be employed.

"7th. That from and after the fourth day of July next, the individuals and parties, now stockholders in said Bank of Washington, shall be known and designated by the name of "The president and directors of the Bank of Washington," and the said trustees to be created as aforesaid, shall use the name and style of A., B., C. & Co., "trustees for the Bank of Washington."

"8th. That the trusts, powers, and authorities to be conferred and created as aforesaid, shall be at all times, at the regular meetings of the stockholders or at special meeting convened for that purpose, subject to be in whole or in part changed or modified as said stockholders shall direct and prescribe, and other trusts from time to time in like manner created; provided, however, that no contract which shall have been made by such trustees within the scope of their authority, and no security by them given, shall be in any manner impaired, lessened, or annulled.

83 "9th. That the trustees, as such, shall not be entitled to or receive any compensation for their services; and that any stockholder having stock to the amount of one thousand dollars shall, at all times, have the right to inspect the proceedings of the trustees and to investigate the condition of the bank.

"10th. That the trustees obtain the assent of such of the stockholders as are not present at this meeting to the proceedings thereof so soon as the same can be done.

"11th. That William Gunton, George Bomford, Stanislaus Murray, Archibald Henderson, Jacob Gideon, Edward Dyer, Benjamin F. Middleton, and John F. Callan, be made the trustees under the foregoing resolutions, and with this view that the president and directors of the bank now in office execute and deliver to James Adams, esquire, the now cashier of the bank, the necessary deed, and that he convey to the said William Gunton, George Bomford, Stanislaus Murray, Archibald Henderson, Jacob Gideon, Edward Dyer, Benjamin F. Middleton, and John F. Callan, as trustees, and who, as trustees, are authorized and empowered to appoint, out of their own number, a president and to fix his compensation of his services, and also to appoint a cashier, and such clerks and other agents as may be required, and to fix their compensation.

"12th. Resolved further, That it shall be the duty of the said trustees, in case Congress shall hereafter recharter this bank, to assign and convey all the property and assets of whatever description in their hands to the bank as rechartered, provided that a majority interested in such trust-funds shall first accept the said act of incorporation.

"13th. That it shall be the duty of the trustees to convene an extra meeting of the stockholders whenever required by holders of stocks to the amount of ten thousand dollars, the meeting to be held at such time and place as may be specified in the requisition for the same.

"14th. That the trustees are hereby requested to publish a quarterly statement of the condition of the bank.

"15th. That the present board of directors are hereby authorized to have published in such way as to them may seem best the proceedings of this meeting.

(Signed) "C. C. HYATT, *Chairman.*

(Signed)

"WALTER LENOX, *Sec'y.*"

Now, this indenture witnesseth, that for the purpose of carrying into execution the aforesaid resolution of said stockholders, in consideration of the premises and of the payment of ten dollars lawful money of the United States to the said party of the first part, in hand paid by the said party of the second part, at and before the ensealing and delivery of these presents, the said party of the first part hath given, granted, bargained, sold, transferred, aliened, conveyed, assigned, set over, released, and confirmed, and by these presents does give, grant, bargain, sell, transfer, alien, convey, assign, set over, release, and confirm unto the said party of the second part, his heirs, executors, and administrators, all the estate, lands, tenements, hereditaments, and appurtenances thereunto belonging, and all the estate, right, claim, and demand in, to, upon, or arising out of any lands, tenements, or hereditaments, both at law and in equity, of or belonging to the said Bank of Washington, wheresoever the same may be situated, together with all and singular the bonds, bills, notes, accounts, claims, and demands whatsoever, and all the choses in action, specialities, mortgages, and sealed obligations, judgments, actions, and rights of action at law and in equity, and all the monies, books, papers, and correspondence, and all the furniture now in the banking-house of said bank, and all other the personal property and estate of the said bank, of whatever kind and description, and wheresoever the same may be; to have and to hold all the said property, real and personal, bonds, bills, deeds of trust, mortgages, and other evidences and securities, *and securities*, books of account, cash, furniture, and all debts due to said institution, to him, the said James Adams, his executors and administrators, to his and their only use and benefit and behoof, forever. In trust, nevertheless, and for this especial purpose and object that he, the said James Adams, shall forthwith, by a good and sufficient deed of conveyance, convey, assign, and transfer all the estate, real and personal, and all the property, right, claim, and demand of every kind and description whatever, hereby created, conveyed, and transfer' to him, and all and every other right, interest, or estate, claim, and possession which he may have in any other way or manner, as cashier, agent, or officer of said bank, to William Gunton, George Bonford, Stanislaus Murray, Archibald Henderson, Jacob Gideon, Edward Dyer, Benjamin F. Middleton, John F. Callan, the survivors and survivor, and the heirs,

executors, and administrators of such survivor; and shall assign, endorse, deliver, and set over all the property, notes, bills, drafts, belonging to or held by said bank, as are by law transferrible by assignment, endorsement, or delivery, and shall also transfer, pay over, and deliver to them all the cash, notes, books, papers, furniture, and other property of every form, kind, character, and description, in his charge, custody, or possession.

And the said William Gunton, George Bomford, Stanislaus Murray, Archibald Henderson, Jacob Gideon, Edward Dyer, Benjamin F. Middleton, and John F. Callan, and their survivors and survivor, and the heirs, executors, and administrators of such survivor, shall, forthwith hold, possess, occupy, and have all the said property, real and
87 personal, rights, estates, claim, and demand upon the following trusts, and to and for the herein set forth objects, purposes, and designs.

1st. That said trustees shall, as soon as may be convenient for them after the said fourth day of July, eighteen hundred and forty-four, convene together at the present banking-house of said bank in the city of Washington, where and when they shall organize themselves into a board of trustees, under the name and style of the trustees of Bank of Washington; shall elect out of their own body a president, and shall fix his compensation for his services, and shall appoint a cashier, who need not be one of the trustees, and who shall also be the secretary of said board, and keep regular minutes of the proceedings of said board, and whose compensation for his services shall be in like manner agreed upon and paid. And in case of the death absence of said president or cashier, the said board shall fill the vacancy or appoint a president or cashier to act during said absence or inability.

2. And the said board shall, as soon thereafter as may be practicable and expedient, prepare, ordain, and enact by-law' or rules for their government and conduct in the management of the business entrusted to them, and establishing the mode and conditions of the transfer of stock by any stockholder not inconsistent with law or the powers and
88 duties herein given and prescribed, which by-laws and rules shall as nearly as may be found advisable, correspond with and conform to the by-laws and rules which now exist is said bank and may from time to time revise, alter, and annul the same.

3. And the said trustees and the survivors and survivor of them shall have and retain their said office, power, and estate as trustees as aforesaid until the said trusts so created shall be revoked, annulled, modified, or altered by the stockholders at some general meeting to be by them held, or until at an election hereafter to be held other trustees shall be appointed and elected in their stead and room. And it is further provided that the said trustees may and shall call and convene a general meating of the stockholders to be held on the first Monday of July in every year, and shall at all and every times or time, on a written application to them addressed for that purpose by any number of stockholders holding shares in said company, amounting to a number not less than five hundred, call and convene a general meeting of stockholders, giving not less than ten days' previous notice of said meeting in at least one newspaper published in the city of Washington, and said meeting shall be held at the banking-house in the city of Washington, unless circumstances may require the meeting to be held elsewhere.

4. That at such elections the stockholders respectively shall
89 have as many votes and vote in the same manner and under the same restrictions as were and are provided by the existing charter of said bank.

5. That in the conduct and management of the funds and business entrusted to them, it shall be the imperative duty of the said trustees in the first place to provide amply for the prompt repayment of any deposites which have been or may hereafter be made either with the present corporation, or, after its dissolution, with the said trustees.

And to this purpose they are empowered and authorized to make such contracts and agreements, and to give such security as may be agreed upon between them and said depositors, and to execute this part of their duty and trust either by general regulation or special agreement. In the second place, to make adequate and ample arrangement for the payment and redemption of any note or notes, drafts, checks, bills, which have already been issued by the Bank of Washington, and for the cancellation of the same when redeemed or received, and for the liquidation and adjustment of all other claims, debts, and demands, either in law or equity, against the subsisting bank.

6. All bonds, bills, notes, deeds, and all contracts and agreements of every kind and description whatever to be made and entered into by said board, and countersigned by the cashier, and the faith and funds of the company shall be and are hereby pledged for the
90 faithful performance of all said contracts and none others.

7. The books, papers, correspondence, and funds of the company shall at all times be subject to the inspection of the board of trustees, and any stockholder owning stock to the amount of one thousand dollars shall at any time have the right to inspect the proceedings of the trustees and to investigate the general condition of the trust property, and the same shall also be subject to the inspection and examination of any committee who shall be appointed *to* any general meeting for that purpose.

9. The said board of trustees shall have full power and authority to appoint such officers and agents as may in their judgment from time to time be expedient or necessary in the management of the business entrusted to them, to revoke such appointment, and to pay such officers and agents such compensations for their services as they may think proper, and to require such security for the faithful performance of their duties by the cashier and other officers and agents as they may think proper.

10. The said trustees shall have full power and authority to employ the trust-funds confided to them in the gen'al business of banking, and to do all acts necessary and proper in the transaction of such business, and in no other business whatever, unless authorized or directed
91 by the stockholders at a general meeting.

11. The said board of trustees shall and may, from time to time, as to them shall seem meet and expedient, declare dividends upon the amount of stock invested in said company out of the profits of said company and its business, and direct the time, place, and mode of paying the same, subject to such general rules, regulations, and restrictions as the said board may from time to time adopt, such dividends not to be made more frequently than once in six months, in no case to exceed the profits which may have been actually realized, and the board may at its option retain per cent. upon the capital as a contingent fund.

12. Subject to the restrictions and limitations herein contained, the said board of trustees shall possess the same powers and authority as are now confided to and vested in the president and boards of directors of said Bank of Washington by its charter and by-law'.

That whenever and as often as the members of the said board of trustees shall be changed by the substitution of others, the trustees for

the time being shall forthwith in such manner and form as is by law required, assign and set over the trust property, books, papers, and funds, to their successors, and in case said should at any time hereafter change or modify said trusts as herein declared, or appoint new and other trustees to carry out and execute the same, the
91½ said existing trustees shall convey or hold as may be necessary and proper, the said trust property and funds, for the purposes designated.

14. That the said board of trustees shall have power to fill up all vacancies which may occur in their own number from among the stockholders of said company, and to do and perform such acts as shall be necessary to vest in such parties the power and property of the trustees.

15. That said board of trustees shall have and possess all and every power, authority, and right, which may be proper and necessary, fully to carry out, fulfil', and execute, and to cause to be carried out, fulfilled, and executed, the hereinbefore recited resolutions of the stockholders.

In witness whereof the said party of the first part hath caused these presents to be signed by the president of the said Bank of Washington, countersigned by its cashier, and sealed with its corporate seal the day and year first above written.

[SEAL OF THE BANK.] W. GUNTER, *Pres't.*

Attest:
JA'S ADAMS, *Cashier.*

Sealed and delivered in the presence of—
B. K. MORSELL.
W. THOMPSON.

92 DISTRICT OF COLUMBIA, *Washington County, to wit:*

We, Benjamin K. Morsell and William Thompson, justices of the peace, in and for the county aforesaid, in the District of Columbia, do hereby certify, that William Gunton, president of the Bank of Washington, the said bank being a party to a certain deed bearing date the third day of July, in *in* the year eighteen hundred and forty-four, hereto annexed and hereinbefore written, personally appeared before us in our said county, the said William Gunton being personally well known to us as the president of said bank, and he did acknowledged the same to be the act and deed of the said bank.

Given under our hands and seals this third day of July eighteen hundred and forty-four.

B. K. MORSELL, *J. P.* [SEAL.]
W. THOMPSON, *J. P.* [SEAL.]

I, E. C. Eddie, register of deeds for the District of Columbia, do hereby certify that the foregoing and annexed is a true copy of a deed from the president & directors of the Bank of Washington to James Adams, recorded in liber W. B., No. 111, folio 10, &c., of the land records, for the county of Washington, in the District of Columbia.

Given under my hand and official seal this 3d day of August, 1867.

[SEAL.] EDWARD C. EDDIE,
Register.

[5-c't. int. rev. stamp, cancel'ed.]

(Indorsed:) T. B. Exhibit No. 1. The president & directors of the

Bank of Washington, to James Adams. Deed. Filed Dec. 1, 1863. R. J. Meigs, clerk. $6.00. Mr. Adams.

93 The proceedings of the stockholders of the Bank of Washington, in general meeting assembled on the 29th of June, 1844.

C. C. HYATT, *Chairman.*
W. LENOX, *Secretary.*

94 (Copy.)

At a general meeting of the stockholders of the Bank of Washington convened according to law in pursuance with a public notice of the board of directors of said bank, bearing date the 16th day of May, 1844, calling a general meeting of the stockholders of the Bank of Washington for the following purposes, viz: "For the purpose of deciding on the course proper to be pursued in view of the expiration of the present charter, and to consider the provisions of any law of Congress which may be passed in relation to the renewal thereof," held on Saturday, the 29th of June, 1844, at the banking-house of said bank, C. C. Hyatt, esq., of Maryland, was appointed chairman, and Walter Lenox, of the city of Washington, secretary. On motion, the list of stockholders being called, the following holders of stock appeared either in person or by proxy:

	Am't. of stock.	No. of votes.
Susan Baltzer	129	49
John Bailey	125	46
Marshall Brown	32	30
Ann Benning	20	21
George Bomford	178	59
95 James Birth, adm	10	10
John Boyle	26	26
P. Berry	9	09
S. Bacon	25	25
Ann Bordeau	105	45
S. Burche	85	41
Thos. Brown	50	34
J. D. Barclay	34	30
Geo. Crandle	11	11
J. Cassin	56	35
Ed. Cubbush	19	
J. F. Callan	17	17
M. E. E. Cutts	100	44
Tho's Carbery	125	49
G. Duvall	488	121
S. Duvall	16	16
E. Dyer	236	71
F. Dodge	22	22
W. Easby	17	17
J. Elgar	200	64
F. Ins. Co	252	74
Tho's Fenals	75	39
W. Fischer	119	47
W'm Gunton	504	124
Geo. P. Todson	264	76
W'm H. Gunnell	116	47
Mary Gideon	5	5

	Jacob Gideon	95	43
	Do. in trust	5	5
96	A. Henderson	50	34
	Ann Hanson	8	8
	Louisa Harrison	573	138
	P. G. Howle	85	41
	Mary Harrison	49	33
	C. C. Hyatt	53	34
	W'm B. Jones	14	11
	Julia Keep	23	23
	W. Lenox	20	20
		"	"
	Jane McCombe	262	76
	J. C. Hall	48	33
	S. Murray	21	21
	G. Duvall, in trust	150	118
		"	"
	W. Gunton	3,088	
	S. Bacon & Co	1	1
	John Marron	70	38
	B. P. Middleton	25	25
	J. C. Pickett	280	80
	John Roberts	124	48
	R. Semmes	152	54
	Ed. Semms	421	108
	R. E. Semms	140	52
	B. J. Semmes	58	35
	S. H. Smith	299	83
	R'd Smith	543	132
	Ja's Southgate	170	58
	J. B. H. Smith	14	14
97	A. Simpson	23	23
	A. Shepherd	37	30
	S. H. Smith, treas	40	32
	A. Thornton	25	25
	Trustees of H. Foxall	176	59
	T. Wheeler	23	23
	R. C. Weightman	17	17
	W. Ward	108	47
	Geo. W. Walker	93	42
	F. A. Dickens	149	53
	W'm B. Jackson	24	24
	W'm B. Todd	1	1
	B. L. Jackson & Bro	1	1

The chairman having announced that a large majority of the stock was represented, and having stated the objects of the meeting as set forth in the public notice,

The following preamble and resolutions were submitted to the stockholders for their approbation by the president, in behalf of the directors:

This meeting having taken into consideration the present situation of the bank, that its charter will expire on the fourth day of July of the present year; that Congress has adjourned without granting any
98 extension of said charter, or making any adequate provisions for this state of affairs, thus leaving us to make such arrangements

and to adopt such measures as our own sense of justice and of duty may demand, without violating or conflicting with what may reasonably be presumed to be the object and purpose of Congress:

Be it therefore resolved, That it has become a matter of imperative necessity as the only means of providing against the evil consequences which must result from the termination of our charter, under existing circumstances, that the entire property and assets of the bank should be assigned over and conveyed to trustees.

2nd. That in said deed of trust, as it is our first duty, so it shall be our first object, to provide for the full and entire security of each and every party who has confided in the honour and integrity of this institution, by depositing his money or property in our custody,
99 for the prompt and full payment of our circulation, and for the just and prompt adjustment and liquidation of all other lawful claims and demands of other parties growing out of any business transactions with this bank.

3. To invest the said trustees with ample powers so to employ the means and property now held by the bank, or which may hereafter come to the hands of said trustees, as will best promote the interests of the stockholders, those with whom they have had, or may hereafter have, business transactions, and of the community in which we reside.

4th. That, to carry out these general views, the president and directors of the Bank of Washington be, and they are hereby, instructed and empowered to cause to be prepared and executed such deed or deeds as may in their judgment be best adapted to secure the above enumerated objects; and after providing in a full and satisfactory manner for the
100 faithful fulfilment of all the obligations of the bank either in law or equity, to manage and conduct the affairs and property in their hands as will the most nearly correspond with the present and the past business of the institution, to employ and pay such officers, agents, and parties as they may deem expedient or proper to employ; to make such arrangements and contracts, and upon such terms and conditions, as they shall deem expedient and proper; and in general have, possess, and exercise all such authority and discretion as are now possessed and may be exercised by the president and board of directors.

5th. That, when the said trustees shall be appointed as aforesaid, the cashier be, and he is hereby directed and empowered to assign, transfer, and endorse to them all notes, bills, and other evidences of debt or demand, and all other personal property, cash, books, papers, &c.,
101 belonging to, held by, or in possession of the bank, which may require to be thus transferred and passed.

6th. That the said deed or deeds of trust shall further provide for periodical and occasional meeting' of the stockholders; for the periodical election of trustees, for the reports of the business transactions, situation, and affairs of the trust to the parties interested, and for the faithful performance of all the duties and trusts which may be imposed and created for securing the fidelity of all officers, clerks, and agents who may be employed.

7th. That from and after the fourth day of July next, the individuals and parties now stockholders in said Bank of Washington shall be known and designated by the name of "The president and directors of the Bank of Washington," and the said trustees to be created as aforesaid shall use the name and style of A, B, C, &c., "Trustees for the Bank of Washington."

8th. That, the trusts, powers, and authorities to be conferred
102 and created as aforesaid, shall be at all times, at the regular meet-

ings of the stockholders or at special meetings convened for that purpose, subject to be revoked in whole or in part, changed, or modified, as said stockholders shall direct and prescribe, and other trusts from time to time in like manner created; provided, however, that no contract which shall have been made by such trustees within the scope of their authority, and no security by them given, shall be in any manner impaired, lessened, or annulled.

9th. That the trustees, as such, shall not be entitled to or receive any compensation for their services, and that any stockholder having stock to the amount of one thousand dollars shall at all times have the right to inspect the proceedings of the trustees, and to investigate the condition of the bank.

10th. That the trustees obtain the assent of such of the stock-
103 holders as are not present at this meeting to the proceedings thereof, so soon as the same can be done.

11th. That William Gunton, George Bomford, Stanislaus Murray, Archibald Henderson, Jacob Gideon, Edward Dyer, Benjamin F. Middleton, and John F. Callan be made the trustees under the foregoing resolutions, and with this view the president and directors of the bank now in office execute and deliver to James Adams, esq., the now cashier of the bank, the necessary deed, and that he convey to the said William Gunton, George Bomford, Stanislaus Murray, Archibald Henderson, Jacob Gideon, Edward Dyer, Benjamin F. Middleton, and John F. Callan, as trustees, and who, as trustees, are authorized and empowered to appoint, out of their own number, a president, and to fix his compensation for his services; and also, to appoint a cashier and such clerks and other agents as may be required, and fix their compensation.

12th. That it shall be the duty of said trustees, in case Con-
104 gress shall hereafter recharter this bank, to assign and convey all the property and assets of whatever description in their hands to the bank as rechartered, provided a majority in interest interested in such trust-funds shall first accept such act of incorporation.

13th. That it shall be the duty of the trustees to convene an extra meeting of the stockholders whenever required by holders of stock to the amount of ten thousand dollars, the meeting to be held at such time and place as may be specified in the requisition for the same.

14th. That the trustees are hereby requested to publish a quarterly-yearly statement of the condition of the bank.

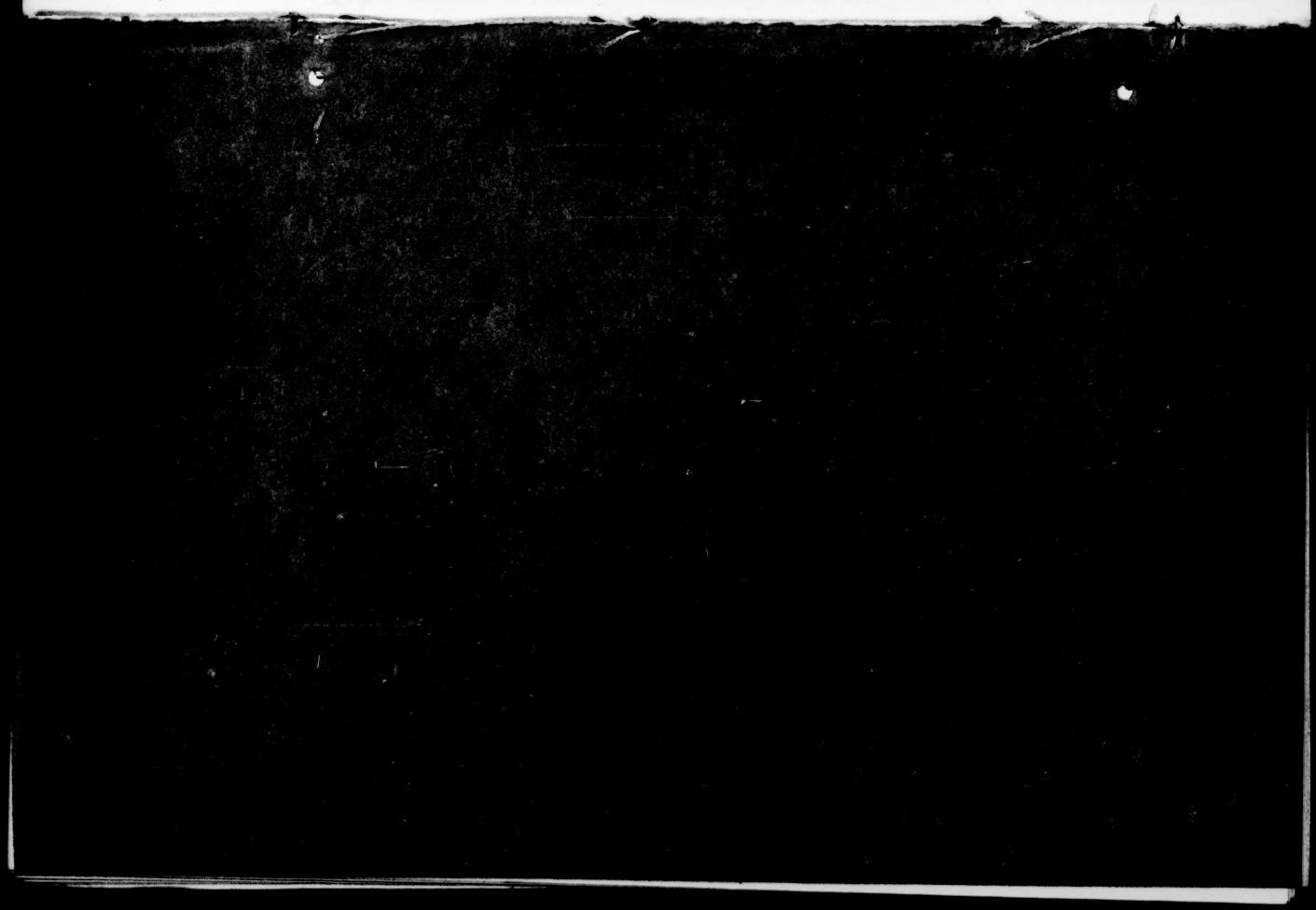
15th. That the present board of directors are hereby authorized to have published in such way as to them may seem best, the proceedings of this meeting.

After the reading of the resolutions, the opinion of R. S. Coxe, coun-
sellor, in relation to the existing legal rights of the bank was
105 laid before the meeting.

Upon motion of U. Ward, the resolutions were considered seriatim, all of which were unanimously adopted, after which the meeting adjourned.

(Signed) C. C. HYATT, *Chairman.*
(Signed) WALTER LENOX, *Secret'y.*

(Indorsement on cover:) No. 415. William C. Zantzinger, Harriet A. Zantzinger, William F. Zantzinger, Annie B. Zantzinger, Jane H. Zantzinger, and Daniel W. Zantzinger, appellants, vs. William Gunton and the Bank of Washington. Dist. of Columbia sup. court. Filed 10th September, 1872.



JAMES ADAMS
TO
WILLIAM GUNTON *et al.*
} Recorded 21st Oct., 1844.

This indenture, made this third day of July, in the year of our Lord one thousand eight hundred and forty-four, between James Adams, of the city of Washington, of the first part, and William Gunton, George Bonford, Stanislaus Murray, Archibald Henderson, Jacob Gideon, Edward Dyer, Benjamin F. Middleton, and John F. Callan, of second part, witnesseth:

Whereas the President and Directors of the Bank of Washington, by their deed of indenture, bearing even date herewith, did convey, assign, and transfer unto the said party of the first part all the property, real and personal, debts, choses in action, cash, books of account of every sort, kind, character, and description, wherever situated, as by reference to said deed of indenture will more fully appear, and which is to be held, deemed, and taken as part of this indenture, as if the same were herein fully and minutely recited; and whereas the said deed of indenture was made for certain trusts and confidences therein specifically set forth, particularly that the said party of the first to these presents should convey, assign, transfer, set over, and deliver the said property therein enumerated to the parties of the second part herein above named, upon the special trusts and confidences therein expressed: Now this indenture witnesseth that for and in consideration of the premises and of the trusts aforesaid, and for the further consideration of ten dollars to the said party of the first part, paid at and before the ensealing and delivery of these presents by the said party of the second part, the receipt whereof is hereby acknowledged, he (the said party of the first part) hath given, granted, bargained, sold, aliened, conveyed, assigned, set over, delivered, released, and confirmed, and by these presents doth give, grant, bargain, sell, alien, convey, assign, set over, deliver, release, and confirm unto the said party of the second part and the

survivors and survivor of them, and the heirs, executors, and administrators of such survivor, all the property, real and personal, debts, claims, demands, bonds, bills, notes, mortgages, judgments, decrees, evidence of debt and securities, cash, furniture, books, papers, and other things comprehended, enumerated, and described in said above in part recited indenture, and all other property, matters, and things which may now be in the possession, charge, custody, and control of the said party of the first part, as the cashier, agent, or officer of the Bank of Washington, to have and to hold the same and every part and parcel thereof, with the appurtenances, unto the said party of the second part, the survivors and survivor of them, and the heirs, executors, and administrators of such survivor, to their only proper use, benefit, and behoof forever; the said parties of the second part, and the survivors and survivor of them, and the heirs, executors, and administrators of the survivor, to have, hold, possess, use, occupy, and employ the same in the manner and for the uses, purposes, and trusts in the above-recited deed of indenture set forth, mentioned, declared, and described, and to and for no other use, purpose, design, or object; and the said parties of the second part do hereby accept said trust, and hereby bind themselves, covenant, and agree to perform and execute fully the said trusts, confidences, and objects as are therein and thereby declared.

In witness whereof the said parties have hereunto interchangeably set their hands and seals the day and year first above written.

JAMES ADAMS. [SEAL.]
W. GUNTON. [SEAL.]
GEORGE BOMFORD. [SEAL.]
STANISLAUS MURRAY. [SEAL.]
ARCHIBALD HENDERSON. [SEAL.]
JACOB GIDEON. [SEAL.]
E. DYER. [SEAL.]
B. F. MIDDLETON. [SEAL.]
JOHN F. CALLAN. [SEAL.]

Sealed and delivered in the presence of
W. THOMPSON,
B. K. MORSELL.

DISTRICT OF COLUMBIA,
Washington County, to wit:

We, William Thompson and Benjamin K. Morsell, justices of the peace in and for the county aforesaid, in the District of Columbia, do hereby certify that James Adams, a party to a certain deed hereinbefore written, and hereto annexed, bearing date the third day of July, eighteen hundred and forty-four, personally appeared before us, in our county aforesaid, the said James Adams being personally well known to us, and acknowledged the same to be his act and deed.

Given under our hands and seals this third day of July, eighteen hundred and forty-four.

W. THOMPSON, *J. P.* [SEAL.]
B. K. MORSELL, *J. P.* [SEAL.]

I, E. C. Eddie, Register of Deeds for the District of Columbia, do hereby certify that the foregoing and annexed is a true copy of a deed of trust from James Adams to William Gunton and others, recorded in Liber W. B. M., No. 111, folio 10, one of the land records for the county of Washington, in the District of Columbia.

Given under my hand and official seal this 3d day of August, A. D. 1867.

[SEAL.] EDWARD C. EDDIE,
Register.

Supreme Court of the United States.

October Term, 1873.

ZANTZINGERS, APPELLANTS,
vs.
WILLIAM GUNTON AND BANK OF WASHINGTON,
APPELLEES.
No. 199.

Appeal from the Supreme Court of the District of Columbia.

Brief of Counsel for Plaintiffs and Appellants.

STATEMENT OF THE CASE.

The complainants are the heirs of William Fischer and of Harriet, his wife, both formerly of the city of Washington.

William Fischer died in 1852—his widow, Harriet Fischer, died in 1859.

The complainant, Mrs. Harriet Anne Zantzinger, is the daughter and only child of the aforesaid William and Harriet Fischer.

William C. Zantzinger is the husband of the last-named Harriet Anne Zantzinger, and the other complainants are the children of these two.

At his decease, William Fischer left a will, in which, after certain minor disposals, he bequeathed all his real and personal estate to his wife.

Harriet Fischer, at her decease, left a will, which, after certain legacies, bequeathed all her real and personal property in trust for the benefit of her child and grandchildren, the present complainants, naming, as trustee, William Gunton, the defendant, who was also her brother.

William Fischer was in his lifetime seized of certain squares and lots of ground in the city of Washington, of which a schedule is annexed to complainant's bill, and marked Exhibit C.

Of these squares and lots, on the 14th of May, 1845, William Fischer and his wife made a deed of conveyance to William Gunton, the defendant, in trust, to secure the payment of a note drawn by the said William Fischer for $6,065.84, dated May 3, 1845, at sixty days, to his own order, directing the trustee to sell the property, in order to pay the note, and to pay the balance, if any, in such manner as William Fischer, the grantor, might, by any instrument in writing, under his hand and seal, direct to be made; and by such an instrument, he afterwards, viz., on the 30th of December, 1845, directed the trustee, William Gunton, "to pay *over all moneys which shall remain* "*of the proceeds of the sales of said squares and lots,* "*after full payment of the note mentioned in the deed,* "and after deducting a commission at the rate of ten per "centum on the whole amount of such sales, as a compen- "sation for his services as trustee in disposing of said "property *to the trustees of the Bank of Washing-* "*ton.*"

All the foregoing facts are admitted by the answer of defendant.

Record, pp. 1 to 11.

The complainants ask that the trustee be ordered to account fully; to state what portions of the property conveyed to him have been sold, and to specify what portions remain unsold.

To state whether the note of $6,065.84 has been paid; to state in what manner he has disposed of the proceeds of the property sold under said deed of trust; and to pay over to the heirs of the grantor, William Fischer, all the moneys which may be found to be due them, and to reconvey to them all the property belonging to them under the devises of their ancestors' last wills.

The answer of defendant admits that he had sold, up to the tenth day of December, 1850, so much of the property as to enable him to pay the note, as he did, *and still to have a considerable balance in his hands.*

See Exhibit No. 6, p. 39.

That the trust was to sell the property and pay over the proceeds as William Fischer should under seal direct; and he did so direct the moneys to go to the trustees of the Bank of Washington; and that neither William Fischer nor his wife, in his or her lifetime, ever made or asserted any claim to the property or proceeds thereof.

Record, p. 10.

There was a decree dismissing this bill of complaint with costs, and plaintiffs have appealed.

Record, p. 48.

ASSIGNMENT OF ERRORS.

The court below erred—

First. In admitting parole testimony of what the parties

said before, at the time of, and after making them, to alter and contradict the deeds themselves.

Second. In interpreting the written instruments, relied on by the complainants, not by their own terms, but by the uncertain testimony and proofs of defendants.

Third. In making a new contract for the parties.

Fourth. In deciding that the trustees of the Bank of Washington were entitled under the deed of the 15th of May, 1845, and the direction of the 13th December, 1845, to the property conveyed and the proceeds of sale.

Fifth. In deciding that the directions of the 13th December, 1845, were to be construed as authorizing the trustee to pay the surplus proceeds of sale, after discharging the incumbrance of the deed of trust, over to the trustees of the Bank of Washington for their own use, and not for the use of William Fischer.

Sixth. In deciding that William Fischer had no beneficial interest in the property conveyed by the deed of trust to William Gunton.

Seventh. In deciding that the trustees of the Bank of Washington were entitled beneficially to the property conveyed by the deed of trust to William Gunton, and not sold at the time complainant's bill was filed, and refusing a decree against said Gunton to disclose what of said property so remained unsold at that time.

Eighth. In refusing to compel William Gunton to render an account of the property sold by him under said deed of trust, and of the proceeds derived therefrom, and the manner in which he had used or disposed of the same.

Ninth. In deciding that the trustees of the Bank of Washington were capable of taking indirectly an interest in real estate contrary to the provisions of the act of Congress authorizing the banks of the District of Columbia to appoint trustees at the time of the expiration of their charters.

Tenth. In deciding that the trustees of the bank could in violation of a prohibitory law continue its banking business after its charter had expired and the refusal of Congress to renew it.

Eleventh. And in denying to the complainants the relief sought by their bill.

BRIEF OF ARGUMENT.

First. It appears, then, that Fischer, being indebted to the Bank of Washington for a note the bank had discounted, and by him given for the price of certain real estate he had purchased, to secure the bank, conveys real estate by an instrument, under seal, to W. Gunton in trust, to sell from time to time, and apply the proceeds to the extinguishment of the note; which being done, any surplus of money in his hands is to be paid by him, Gunton, to the trustees of the Bank of Washington.

See Record, page 6, at foot, and Record, pages 11 and 38.

The particular use declared is to pay *any surplus of money* which might remain, to the bank trustees; and it is a settled principle of equity that "where a particular use "is declared, then the residue of the use results to the "grantor, for the presumption that the grantor meant to "part with the whole use is thereby repelled."

Story's Equity Jurisprudence, § 1199, at foot.

So far, then, equity would require certainly, and at least, a reconveyance to the grantor, or his heirs, of all the squares and lots described in the deed of trust and remaining unsold.

But the defendant alleges that prior to 1st May, 1845, Daniel Carroll was indebted by judgment to the bank; that to secure payment thereof, Daniel Carroll had conveyed a large number of squares and lots to Tabbs, Wallach, and Weightman in trust to sell, and with proceeds of sale to satisfy the judgment.

That said trustees had sold a large amount of said squares and lots to one James Greenleaf, who had not received for them a conveyance, nor had paid for them at the time of his death, which took place before the 1st May, 1845.

That this condition of affairs was deemed an obstacle to the movements of the bank to obtain a settlement of their judgment-claim againt Daniel Carroll; and, under advice of counsel, the bank resorted to an expedient to avoid this obstacle.

William Gunton, the president of the bank, procured from the heirs of James Greenleaf an assignment to William Fischer, the ancestor of complainant, of all their interest and estate in said squares and lots; and on this, R. C. Weightman, surviving trustee under Daniel Carroll's deed, conveyed to William Fischer all of the said squares and lots for the price of $6,500, for which Fischer gave his promissory note, dated 3d May, 1845, payable to his own order, at sixty days, to Weightman, who endorsed the note to the bank without recourse; the latter cashed the note, and in this way the surviving trustee under Carroll's deed disposed of the property.

That William Fischer, when he agreed with Gunton to become the purchaser of the property, also agreed to give

the bank the benefit of all the profit, *provided the bank would furnish the means of paying for the same, and take all the risks and bear all the losses upon the transaction.*

To prove this, Mr. Gunton himself was examined, and on this, two questions arise—

First. Is such evidence admissible on general principles?

Second. If it be, do the special circumstances of this case exclude it?

First. No principle of the law of evidence is more firmly established than that which excludes evidence of what the parties to a deed said, before, or at the time of, or after making it, to show anything altering or contradicting the deed itself.

In his answer to the 7th interrogatory in chief, Gunton says that Fischer agreed with him, verbally, to take a deed of the property as agent of the bank, while Gunton himself takes a deed of trust from Fischer as absolute owner. And this is the hinge on which the whole defence turns; that is, to prove that Fischer verbally declared himself agent of the bank at the time the deed proclaimed him owner.

See Record, p. 14, top.

Such evidence was inadmissible.

See 1 Greenleaf on Evidence, §§ 277 to 282.

And as to property, Lord Mansfield said: "Court of "Equity is as much bound by positive rules and general "maxims concerning property—though the reason of them "may now have ceased—as a court of law is."

Doe on demise of Lang *vs.* Leeming, 2 Burrow, edition London, 1766, p. 1108.

The rules of evidence are the same in equity as they are at law.

Story's Equity Jurisprudence, § 1527.

"The same general rule prevails in equity as at law, "that parol evidence is not admissible to contradict, qual- "ify, extend, or vary written instruments; and that the "interpretation of them must depend upon their own "terms."

Story's Eq. Jurisprudence, § 1531.
Gresley's Eq. Evidence, p. 197, edition Phil., 1837.
Leman *vs.* Whitney, 4 Russell, p. 423.
Imham *vs.* Child, 1 Brown Ch. R., *92.
Townsend *vs.* Stromgroom, 6 Vesey, 332.
Portmore *vs.* Morris, 2 Brown Ch. R., *219.
Hare *vs.* Shearwood, 3 Brown Ch. R., *168.
Rich *vs.* Jackson, 4 Brown Ch. R., *518.
Willard *vs.* Taylor, 8 Wallace, p. 558.

Second. The deed of trust from Fischer and wife to William Gunton of 14th May, 1845, recorded 5th August, 1845, declares the conveyance to be made for the purpose of enabling Gunton to sell "the squares and lots," and the moneys produced by the sales thereof, &c., "shall be "applied to the payment of the note, or any notes given "in renewal of it," and the balance paid according to Fischer's direction.

Record, p. 6, foot.

The direction given to Gunton was "to pay over all "moneys which shall remain of the proceeds of the said "squares and lots, after full payment of the note mentioned

"in the deed, and to the trustees of the Bank of Washing-"ton," &c.

Rec., p. 38.

This gave the trustees no title as owners to any surplus land or money.

Land sufficient having been sold to pay the note, no more could be sold.

The direction to pay the surplus of money to trustees of the bank was nothing more than an order to deposit to Fischer's credit. Fischer kept his account there.

See Rec., p. 41.

Third. The property was purchased by Fischer and paid for by him, (see Rec., pp. 15, 17, 22, 37, 49,) and no fraud, accident, or surprise upon the trustees of the bank in any part of the transaction is set up.

See Hill on Trustees, pp. 153–4, *96.

Fourth. The Bank of Washington could not hold real estate except for certain purposes and under certain conditions.

See act chartering the bank, Feb. 11, 1811, 2 U. S. S. L., p. 625.
Act extending charter, 2d March, 1821, 3 U. S. S. L., p. 451.
Act reviving and extending charter to 4th July, 1844, August 25, 1841, 5 U. S. S. L., p. 451.

And by the act last quoted it will be seen that the trustees of the bank had no power to take and hold real estate at all.

Fifth. As the act of Congress had ordered the bank to be wound up and go out of existence, the device of naming trustees for carrying on the business was illegal.

See Rec., pp. 50 to 59 inclusive.

They attempted to create or continue the existence of a stock company, with power in the stockholders to transfer their stock, as is done in incorporated stock companies. Such an attempted organization is null and void at common law.

Duvergier *vs.* Fellowes, 5 Bingham, *247; Blundell *vs.* Winsor, 8 Simons, 601; Josephs *vs.* Perber, 3 Barn. & Cress., p. 639.

Sixth. It has been said that the trustees act in two capacities: first, as trustees under the act of Congress; second, trustees for the new association.

See 8 Gill, p. 59.

In the first case they have no right to hold real estate by the terms of the law; in the second, they have no such right because their organization is illegal.

See the sections 29 and 30 of the act of March 3, 1817, 3 Stat.-at-Large, p. 389.

Respectfully submitted.

R. T. MERRICK,
FRANCIS MILLER,
THOMAS J. DURANT.

Supreme Court of the United States.

OCTOBER TERM 1873.

ZANTZINGER ET AL.
Appellees.
v.
GUNTON ET AL.
No. 199.

Brief for Appellees.

This bill was filed by the complainants claiming through William Fischer, deceased, to obtain an account from William Gunton of the proceeds of the sale of sundry parcels of real estate, conveyed to the said Gunton in trust, on the 14th of May, 1845, by the said deceased, and for the conveyance to them of the unsold residue of the said real estate.

PLEADINGS.

By the deed of trust exhibited with the bill, the said William Fischer and Harriet his wife, reciting that the said William Fischer stood indebted to the trustees of the bank of Washington, on his note, dated May 3, 1845, for $6,065,84, and that the parties of the first part were desirous of securing the payment of the said note, conveyed to William Gunton a large number of lots in the city of Washington, upon trust, to sell the same *whenever and as soon as he thought proper, at public or private sale for cash or upon credit, upon such security as he should*

approve, and to apply the money, after paying taxes and expenses to the payment of the said note, and to pay over the balance in such manner as the said William Fischer, by any instrument under his hand and seal, should direct.

And the grantors covenanted that the said William Fischer and his heirs would make any further deeds required by them at the cost of the trustees of the bank for the conveyance of the said lots.

And the grantor further covenanted that he and his heirs would do or cause to be done no act by means whereof or whereby the sale should be in any way arrested or prohibited by any legal or equitable proceeding or otherwise. Rec. p. 5.

As it is not alleged in the bill that the maker of the said deed ever directed the residue of proceeds to be paid to the complainants, or that he died without making any such appointment, it is obvious that the complainants show no title to said proceeds, and as to the real estate it is still more obvious that they are seeking a measure of relief inconsistent with and in opposition to the express covenants of their ancestor, under whom they claim, which covenants by express words are made equally binding upon them as upon him; and so the bill would be bad on demurrer.

The defendants however pleaded in bar that the grantor in said deed of trust, in pursuance of the mode prescribed to himself in the deed for disposing of the residue of the proceeds of sale, did, on the 13th December, 1845, by an instrument of writing, under his hand and seal, direct and require the said trustee to pay over to the trustees of the Bank of Washington all moneys remaining of the proceeds of sale of said property, after paying the note and deducting a commission of ten per cent. for his own services.

The defendants in their answer further go into a full explanation of the consideration upon which the said order of William Fischer was given. It was briefly this, that Fischer had purchased the property in question at the request and for the benefit of the bank, and had paid for it by his said note, under an agreement that the bank should receive the proceeds of the property when sold and take care of the note and indemnify him against all loss, and that the bank at once cashed—that it purchased the note which had been endorsed without recourse, and so the bank at once fulfilled its contract by becoming the owner of the note, which in fact had been made by Fischer as its agent.

The answer also states fully the purpose of the bank in having the purchase made by Fischer, which was to close an outstanding trust, created many years before, in order to provide means for paying a debt due to the bank.

Issue was joined by the complainants, and testimony taken by the defendants, proving the allegations of the answer.

No evidence was offered by the complainants.

The Evidence.

The evidence proves the execution of the directions of December 13, 1845.—Burr Rec., pp. 24, 38; Gunton Rec., p. 14, 210.

At this stage of the case, how does the right of the parties appear, on the written proofs?

First, we have the owner of real estate conveying it to a trustee to sell, and covenanting that the trustee should be permitted to sell, and that neither the grantor nor his heirs would arrest the sale. Provision being thus made for turning all the real estate into money, the deed pro-

ceeds to dispose of the money—first to the payment of the note, and second, to pay the trustee one-tenth of the amount of sales, and third, to pay the trustees of the Bank of Washington the remaining nine-tenths.

Here is a perfect and exhaustive disposal of the whole subject matter by a party having the right to dispose of it, and no suggestion has been made that for any cause the deeds so executed by him are not valid.

Whether we consider the deed of trust as having disposed of the grantor's whole interest in the fund thereby created, by devoting part to the payment of the note, and the residue to an object to be afterwards appointed, or whether we consider that the deed disposed of but a part of the fund, leaving a resulting trust as to the rest, can make no difference in the result. In the first case the directions of December 13, operated as an appointment, and the trustees of the bank take under the deed of trust as beneficiaries; in the second case the directions operated as an assignment, and the trustees of the bank take as assignees.

The appointment is "an order drawn for the whole of a particular fund," and in the very words of the Supreme Court, in Mandeville v. Welch, 5 Wheat, 286, "amounts to an equitable assignment of that fund, and after notice to the drawee, it binds the fund in his hand."

See also Tiernan v. Jackson, 5 Pet., 598.

Lett v. Morris, 4 Sim., 607.

It was a transfer and delivery of the thing in the only manner in which that could be done.

And the instrument being under seal imports an adequate consideration.

2 Kent, 464, and cases there cited.

Coldwell v. Williams, 1 Bai. Eq., 174.

But whether there was or was not any consideration for the assignment, whether the assignment was or was not purely voluntary, has no bearing in this case. The question of consideration becomes important only when the volunteer comes into court to ask the aid of equity to perfect an incomplete assignment or to enforce an agreement to assign. Equity will no more interfere to enable a donor to get back what he has once given away, than to enable a vendor to get back property which he has sold.

Ellison v. Ellison and cases discussed with it in 1 Leading Cases in Equity, 219.

In this case the defendants ask no aid of the court to enforce their rights. They have a perfect and complete assignment constituting Gunton a trustee for the bank, and such a trust the court would be bound to enforce, if, for instance, the trustees of the bank found it necessary to file a bill against Gunton for an account or other relief. "That trusts when created and declared, though by a voluntary conveyance or settlement will be sustained or enforced in equity is equally well settled."

1 Leading Cases in Equity, 241, and cases there cited and discussed.

II.

But the defendants have chosen, and it is clearly admissible to them to show what was the consideration for the assignment to the bank of the proceeds of the sale of the land. The directions, viewed as an assignment, import consideration; no rule of evidence forbids us to show what that consideration was. We seek neither to vary nor contradict the written contract; we introduce the evidence to corroborate the deed—cumulatively. (See Bradley v. Steam Packet Co., 13 Pet., 89.)

The testimony of Dr. Gunton is full and explicit to the point that Fischer never did anything whatever but sign the note, the deed of trust, and the directions. He never paid a cent for the property, or for any purpose connected with it. The money was paid in fact by the bank in advance of any sales of the trust property, by giving a credit to Carroll for the whole amount agreed to be paid by Fischer, without any reduction whatever. (Rec., p. 40, item under date of May 3, 1845, in Ex. 4.)

His testimony is corroborated by facts which can leave no doubt of the truth in the mind of any one.

1. Fischer's note was payable in 60 days after date, yet it was not paid for more than seven years from its date, Rec., p. 36. It was never renewed, as Gunton's account shows it was paid in instalments, (Rec. p. 37, 49, and seq.); it was never charged to Fischer's account (Exhibit 5,) though he kept an account at the bank, and was amply able to have paid it at any time (p. 19); and when it was paid it was not delivered to him but remained in the possession of the bank. (Rec. pp. 36–39.)

These facts are utterly inconsistent with the claims of complainants, that the purchase of the property and discount of the note were ordinary business transactions.

2. The note was paid in full December 14, 1850, (Rec. p. 36,) and a balance remained of the fund of $994.01, (Rec., p 49, under date of 1850.) Yet, Wm. Fischer, without ever claiming this balance throughout the following year, 1851, was getting discounts, or, in other words, borrowing money of the bank, and paying interest for it. (See his bank account for 1851, Exhibit No. 5, Rec., pp. 41, and seq.) If Fischer was bound to pay the note, and after payment thereof was entitled to the residue, he could not have failed to know when the note was paid. There was a channel through

which he could hardly have failed to learn it. Thomas Gunton, Mrs. Fischer's brother, drew and was a witness to the paper of December 13, 1845, (Rec. p. 24.) He filed away the note when paid, and endorsed the date. (Rec. p. 36.) He was on the most intimate terms with Mr. Fischer, (Rec. p. 19,) and could not have failed to have made known to him a fact so important to his interest as the payment of the note in question.

3. Another circumstance.

On a fly leaf of a tickler of the bank appears this note in the hand writing of Jacob Gideon, one of the trustees of the bank, now deceased: "May 6, 1845, can realize "now by good notes $6,065.84; the Dr. expects to real- "ize $15,000!!! If this is realized the President and "Cashier each to have $1,000."

Fischer's note had been given three days before, for $6,065.84. Dr. Gunton testifies that this entry related to the transaction in question, and that Mr. Gideon was opposed to the bank taking the lots.

It is apparent from the entry above that there was then an opportunity to transfer this purchase to some one at cost; that Dr. Gunton insisted on holding it, expecting to realize $15,000, and that Mr. Gideon's three exclamation marks indicate his astonishment at such an extravagant estimate; nevertheless, Dr. Gunton's advice must have prevailed, for the transaction was consummated by the execution of the deed of trust by Wm. Fischer, May 14, 1845.

4. Another fact appears.

Wm. Fischer was a very methodical man of business. He kept books and in them carefully entered "all the minutest business transactions," "his household expenses, and even moneys that he paid his wife." (Rec. pp. 24, 25.) The books are proven by Burr and Lloyd to

be the books kept by Mr. Fischer. (Rec., pp. 24, 25.)

Now Arthur Fendall produces an abstract taken from the land records of the District of Columbia, of all the purchases of land made by Mr. Fischer (except tax titles) from 1832 to the date of his death (p. 43;) and every one of these is found entered in full on his books, except the purchase of the lots now in question. (Compare James' deposition with Fendall's abstract.) And it is also stated how they were paid for, so much in cash and so much by notes. Why is it that no trace appears on his books of this purchase? There can be but one reason. There is no entry on his books that he ever gave the note in question (p. 42.) Why this omission? Because, so far as he was concerned there was no purchase made and no debt contracted.

5. Another fact:

The note was paid in full, December 14, 1850, and $994.01 left over. After this payment all the lots unsold and the proceeds of lots sold, on complainant's theory, were Fischer's property. Yet after this, on the 28th of December, 1850, he bought and paid for five of the lots which he had conveyed to Gunton. Gunton had sold them to Elliott, who gave a deed of trust to James Adams and Thomas Gunton to secure the purchase money. He failed to pay. The trustee sold and Mr. Fischer bought, and paid $638.66 for them, and this, when he had $994.01 to his credit, and Thomas Gunton, who had filed away the note as paid, was one of the trustees who exacted the payment from Fischer. (Rec. p. 35.)

6. Another fact:

William Fischer died and made his widow his sole residuary legatee and devisee. She was the sister of William and Thomas Gunton, and had joined her husband in the deed to the former. Then these parties

were perfectly acquainted with the whole transaction. William and Thomas Gunton knew the note was paid, and the widow if she did not know the fact, could have known it by asking a question of either of her brothers. She knew, too, that William Gunton was selling off the lots. Her tax bills told her that, for all the property conveyed to William Gunton was still assessed to her, as was and still is the practice in the tax office where property is conveyed in trust to sell. (Rec. p. 32.) She was in great need of money, (Rec. p. 29,) yet never did she claim one dollar of the proceeds of the land in question. Rec. p. 20.

7. The demand now sought to be enforced accrued on the 14th day of December, 1850, on which day the note was paid in full and a balance in money remained on hand, together with a large number of the lots unsold. No demand was ever made on the defendant until the filing of the bill in this cause, April 15, 1870—19 years and 4 months after the cause of action occurred. Every fact stated in the bill, every fact on which the right depended, was as well known to William Fischer in December, 1850, and successively to his widow and these complainants, as they are now.

8. Another fact not less persuasive is found in the relations existing between the parties. Such was William Fischer's confidence in the integrity and business capacity of his wife, that by his will he left to her the bulk of his property absolutely, (see his will, Rec. p. 46,) and such was her confidence in her brother, William Gunton, that by her will she left all her property to him in trust for her daughter and only child, with the most unlimited discretion to deal with it "as if it was his own property," and to give her daughter such part of the income as he should think proper. (See her will, Rec. pp. 2, 3.)

It is impossible to believe that during the last nine

be the books kept by Mr. Fischer. (Rec., pp. 24, 25.)

Now Arthur Fendall produces an abstract taken from the land records of the District of Columbia, of all the purchases of land made by Mr. Fischer (except tax titles) from 1832 to the date of his death (p. 43;) and every one of these is found entered in full on his books, except the purchase of the lots now in question. (Compare James' deposition with Fendall's abstract.) And it is also stated how they were paid for, so much in cash and so much by notes. Why is it that no trace appears on his books of this purchase? There can be but one reason. There is no entry on his books that he ever gave the note in question (p. 42.) Why this omission? Because, so far as he was concerned there was no purchase made and no debt contracted.

5. Another fact:

The note was paid in full, December 14, 1850, and $994.01 left over. After this payment all the lots unsold and the proceeds of lots sold, on complainant's theory, were Fischer's property. Yet after this, on the 28th of December, 1850, he bought and paid for five of the lots which he had conveyed to Gunton. Gunton had sold them to Elliott, who gave a deed of trust to James Adams and Thomas Gunton to secure the purchase money. He failed to pay. The trustee sold and Mr. Fischer bought, and paid $638.66 for them, and this, when he had $994.01 to his credit, and Thomas Gunton, who had filed away the note as paid, was one of the trustees who exacted the payment from Fischer. (Rec. p. 35.)

6. Another fact:

William Fischer died and made his widow his sole residuary legatee and devisee. She was the sister of William and Thomas Gunton, and had joined her husband in the deed to the former. Then these parties

were perfectly acquainted with the whole transaction. William and Thomas Gunton knew the note was paid, and the widow if she did not know the fact, could have known it by asking a question of either of her brothers. She knew, too, that William Gunton was selling off the lots. Her tax bills told her that, for all the property conveyed to William Gunton was still assessed to her, as was and still is the practice in the tax office where property is conveyed in trust to sell. (Rec. p. 32.) She was in great need of money, (Rec. p. 29,) yet never did she claim one dollar of the proceeds of the land in question. Rec. p. 20.

7. The demand now sought to be enforced accrued on the 14th day of December, 1850, on which day the note was paid in full and a balance in money remained on hand, together with a large number of the lots unsold. No demand was ever made on the defendant until the filing of the bill in this cause, April 15, 1870—19 years and 4 months after the cause of action occurred. Every fact stated in the bill, every fact on which the right depended, was as well known to William Fischer in December, 1850, and successively to his widow and these complainants, as they are now.

8. Another fact not less persuasive is found in the relations existing between the parties. Such was William Fischer's confidence in the integrity and business capacity of his wife, that by his will he left to her the bulk of his property absolutely, (see his will, Rec. p. 46,) and such was her confidence in her brother, William Gunton, that by her will she left all her property to him in trust for her daughter and only child, with the most unlimited discretion to deal with it "as if it was his own property," and to give her daughter such part of the income as he should think proper. (See her will, Rec. pp. 2, 3.)

It is impossible to believe that during the last nine

years of Mrs. Fischer's life, Dr. Gunton had been withholding from her the proceeds of her husband's property, and that for the succeeding nine years he has been withholding it from her daughter.

9. In William Fischer's will no mention is made of any of the large number of lots of ground supposed by the claimants to be his property—177 building lots and three whole squares containing, perhaps, half as many more.

III.

No brief or assignment of errors has been filed by the appellants, to this date, (Jan. 10.) At the hearing below it was, and may be here again objected that the trustees of the bank were not competent to take any interest in the land, and that the purchase by Fischer from Weightman became his own individual property, discharged of any trust. That the trustees could take no interest in land, the complainants maintained, upon the terms of the act of Congress of June 17, 1844, from which it is said their powers are derived.

The bank, as a corporation, had the power under the charter of 1811, either to take the land in satisfaction of the debt, or to buy it in order to secure the debt.

Did this power pass to the trustees under the act of June 17, 1844, passed in view of the expiration of the charter on the 4th of July following? The complainants say it did not. They say the act of 1844 gave the trustees no power to purchase real estate under execution or to acquire it in any other way, but, *it seems*, only to hold what the bank had acquired.

The words of the act are that the lands "seized on mesne process, attached, levied upon, set off or in any way assigned and made over to said bank * * shall enure to the said trustees."

In what possible way could *land* seized, attached or levied upon, enure to the trustees? It is obvious that the land itself, in specie, could not *enure*. It could only be the rights of the bank in respect thereof that could enure to them. The bank, as a corporation, was about to be extinguished: the act of 1844 was intended to provide a successor in the form of a board of trustees, to close up the business, and this act is to be construed in connection with the original charter. There is no reason why the legislature should deny to the trustees the power of settling debts in the same manner that the bank had been authorized to do. It could not prolong the liquidation or be a pretext for continuing the business of banking, as the complainants suggest, because it extended only to lands assigned, &c., before the expiration of the charter.

We submit, with confidence, that an examination of all the acts on this subject will result in sustaining the power of the trustees to purchase any land *previously* assigned for the security of any debt due to the bank.

2. But the power of the trustees to take, does not depend on the statute at all. It was the duty of the stockholders, on the approaching dissolution of the corporation, to make arrangements for the collection and disposition of their assets for the security of their creditors.

Curran v. Arkansas, 15 Howard, 304.

They did this, and they went further.

When the charter of the bank was about to expire, Congress made certain provisions in contemplation of that event, by the statutes referred to in the complainants' brief for the complainant, but besides this, the stockholders of the bank determined to form a joint stock company or form a partnership, and by deed, the bank transferred the assets to trustees in trust for the stockholders, and the stockholders through the trustees as

their agents, to commence to exercise their common law right of taking money on deposit and discounting notes. These *trustees* were not a corporation, and did not depend on statute for their powers to act. They were natural persons, and as such might hold lands donated to them.

The trustees of this bank have acted in their natural capacities, and they have powers independent of the act of Congress of June 17, 1844; and derived from the act of the bank while it was a corporation and of the stockholders afterwards. (See their powers, Rec. pp. 50, 56.) Such business was not prohibited or restrained by any statute in this District.

See also, Merrick v. Trustees of the Bank of the Metropolis, 8 Gill., 59.

The Atty. Gen. v. The United States Ins. Co., 2 Johns. C. R., 371, 377.

3. But this point is not material to our case. Granting that the land became Fischer's property discharged of the trust—absolutely his, yet, being thus seized absolutely to his own use, he thought proper to convey it to Gunton to sell, not to sell only a part of it, so much as was necessary to pay the note, but to sell the whole and to turn it into money, and has prohibited himself and these complainants from ever interfering with Gunton in so doing, and particularly from interfering with him in the way they are now doing, by an "equitable proceeding." He further thought proper to grant to the trustees of the bank the money arising from said sale, and he gave it by an instrument executed with those formalities, which preclude any inquiry into his motives.

The complainants say that if he had died before making the appointment the land would have passed to the heirs. We think not; the fee was in Gunton, and would descend to his heirs; both he and they, by the express terms of

the deed, were empowered to sell; both he and they had an interest in the proceeds, and under the covenants in the deed, the heirs of Fischer could not have arrested the sale, whatever might have been their interests in the proceeds. But he did not die until after he made the appointment. The title of the land remains in Gunton, and the proceeds belong to him and to the trustees of the bank, in the proportion of one-tenth and nine-tenths respectively.

4. But the complainants say that the appointment did not pass the land, and that the land therefore passed to the heirs. We do not see the force of this. The land had previously been passed to Gunton. The object of this bill is to make him pass it to the heirs. Fischer had disposed both of the land, and the price of the land Nothing remained.

CONCLUSION.

In conclusion we submit:

1st. That the complainants by this bill show no right to relief.

2d. That upon the facts shown by the evidence, the land was purchased by Fischer for the bank, and was conveyed to Gunton afterwards upon trust to sell and turn over the net proceeds to the bank.

3d. That whatever were the circumstances under which Fischer acquired the land, he, by writing under hand and seal, disposed of all his interest in the land and proceeds to Gunton and the trustees of the bank, and that these complainants have no interest whatever in the subject matter of the suit.

JNO. D. McPHERSON,
W. D. DAVIDGE,
Solicitors for Defendants.